Section 36 Guidelines

Further Report on Guidelines for Bonusing Pursuant to Section 36 of the Planning Act

Planning and Development Department
Robert E. Millward, Commissioner
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CITY OF TORONTO
PLANNING AND DEVELOPMENT DEPARTMENT

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To: Land Use Committee

Subject: Further Report on Guidelines for Bonusing Pursuant to Section 36 of the Planning Act.

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Comments:

SUMMARY

This report responds to the February 8, 1988 request of City Council that I report on a clearly defined process and set of rules for the use of density bonuses and provide, for Council's consideration, a schedule of maximum bonus allowances. In this report, I have examined the possibility of establishing a schedule of bonus provisions which would set out in detail the amount of density increase that could be authorized in exchange for a specific facility, service or matter, as one option among several which Council could pursue. For reasons set out in Section 3 of this report, I do not consider it feasible at this time, nor ultimately desirable in all instances, to take this kind of approach to the use of density incentives. Rather, I am recommending the adoption of guidelines, for inclusion in the Official Plan, which would clearly define the circumstances under which increases in density could be authorized in exchange for public benefits. Subsequent amendments to the Plan would be required to actually introduce specific provisions.

The recommended guidelines for the use of Section 36 of the Planning Act (See Appendix 6) include those which I had proposed in my November 26, 1987 report "Assisted Housing: Options for Private Sector Involvement and Section 36 Guidelines", as well as additional guidelines that resulted from more detailed consideration of the issues involved in bonusing for specific facilities, services and matters.

It would be useful to clarify at this point the relationship among: (1) the subject report, requested by City Council on February 8, 1988; (2) the November 26, 1987 report, which is frequently referenced herein; and (3) the further follow-up report on the November 26, 1987 report, requested by the Land Use Committee at its meeting of February 24, 1988. The November 26, 1987 report dealt with two related but separate matters: 1)

guidelines for the use of Section 36; and 2) a proposed assisted housing bonus under Section 36, in accordance with those guidelines, for the Financial District. The Land Use Committee requested at its February 24, 1988 meeting that I report further on these matters. Previously, on February 8th, City Council had also requested that I report on a set of rules for the use of bonuses, which is the subject of this report. In order to respond to these two requests, the follow-up work on the November 26th report has effectively been split into two separate streams, the first dealing with the guidelines for Section 36, and the second with the proposed Financial District assisted housing bonus. This report represents the results of the first stream. A separate report on the assisted housing bonus for the Financial District that will be forthcoming this summer, will deal with the second stream.

Briefly, the guidelines previously recommended in the November 26th report had set out:

a) that the facilites, services or matters for which bonuses could be authorized should be limited to: assisted housing; heritage preservation; non-profit community, cultural and institutional facilties; public open space; significant pedestrian connections and 'other' facilities, services and matters identified through an appropriate planning study;

b) that the facility, service or matter should take the form of the provision of physical space, land or building;

c) that factors which should be considered in establishing the size of an increase in density include, in particular, impact and value;

d) that commercial bonuses should not be considered outside the Financial District except by way of a special area study;

e) that with respect to bonuses for assisted housing the value of the increased density should not exceed about two times the cost of providing the assisted housing contribution; and

f) that for other benefits the incentive should be less than for assisted housing.

The guidelines proposed in this report are intended to provide clear direction to the public and the development industry regarding City Council's intentions with respect to the authorization of increases in density under Section 36 of the Planning Act, whether implemented through a site specific, Part II, or Part I Official Plan amendment. No specific bonus

provisions are proposed to be implemented at this time, although I will be reporting further on the specific assisted housing bonus for the Financial District in a separate report in the near future.

Section 3 of the report "Options for the Provision of Bonuses", examines in detail the advantages and disadvantages of different approaches to the implementation of bonus provisions, ranging from negotiated site specific amendments to a comprehensive schedule of bonuses to be set out in the Official Plan and Zoning By-law. The conclusion of this discussion is that it is not appropriate at this time for Council to adopt any single approach, but rather to establish, in the Official Plan, guidelines for the introduction of bonus provisions whether on a site specific, Part II or Part I basis.

Section 4 of the Report, "Further Comments on the November 26th Proposed section 36 Guidelines", reviews the specific criteria that had been recommended previously in my November 26th, 1987 report (as noted above) and proposes two general modifications to those guidelines. The first is a further clarification of the form that the provision of any particular facility, service or matter should take; namely that increases in density should not be authorized in exchange for the provision of on-going operating funding. The second is a proposed guideline respecting the establishment of maximum limits for the stacking of bonuses, a matter which is particularly relevant where more than one bonus provision is intended to apply. Additional modifications to the guidelines also resulted from more detailed review, contained in Seciton 5 of the report, of the specific facilities services and matters listed in the guidelines.

Section 5 of the report, "Specific Facilities, Services and Matters - Options for Implementation," analyzes the issues that arise with respect to the use of density incentives to secure each of the six categories of benefit listed in the guidelines: assisted housing; heritage preservation; non-profit community, cultural or institutional facilities; public open space; significant pedestrian connections, and "other" facilities, services and matters. As a result of this analysis, additional criteria are recommended and a program of further study proposed.

Additional guidelines are proposed with respect to: 1) authorizing increases in density in exchange for parks; 2) a process for establishing "other" facilities, services and matters for which incentives could be offered; and 3) the use of the City's authority under the City of Toronto Act to promote assisted housing. The revised recommended guidelines for the use of Section 36 are contained in Appendix 6.

The following further studies and reports are also recommended:

a) A review of the density provisions of the Medium and High Density Mixed Commercial Residential Areas of the Central Core with a view to resolving the current problems related to the UPH and FSI density systems and introducing Section 36 density incentives to promote assisted housing.

b) The review of Section 1A.42 (heritage preservation) should include a further assessment of the appropriateness of additional incentives in this area.

c) A report on work place daycare in the Financial District and the High Density Mixed Commercial-Residential Areas of the Central Core is recommended.

d) The need for a study of significant pedestrian connections is identified with the recommendation that no increases in density for such connections be authorized until such time as a study is completed.

e) A major study of the arts and cultural facilities is called for with a view to establishing an appropriate policy framework, including goals and objectives for such facilities, in the Part I Plan. Generally, further consideration of the use of density incentives on a site specific basis to promote these facilities should be deferred until this study is completed.

Section 5 of the report also highlights the need to quickly complete the Open Space Review called for the 1986 Quinquennial Review and recommends a report, at the earliest possible date, on the use of Section 41 to secure parkland through the redevelopment process.

1. THE REQUEST

On February 8, 1988 City Council had before it a report of the Mayor dated February 1, 1988 entitled "Keeping Toronto a Liveable City" which recommended, among other things:

> "That the Commissioner of Planning and Development report to the Land Use Committee by the end of April on a clearly defined process and set of rules governing any Official Plan density bonus provision, including those under Section 36 of the Planning Act, such report should also include a schedule of maximum bonus allowances."

The Mayor's report also recommended that during the period in which the above noted report would be prepared, City Council not consider any amendments to the Official Plan involving increases in non-residential density. City Council adopted these and other recommendations at its February 8, 1988 meeting. This report responds to Council's request for further study of guidelines for bonusing.

2. BACKGROUND AND INTRODUCTION

This report discusses various considerations respecting the authorization of density increases in exchange for the provision of facilities, services and matters under Section 36 of the Planning Act and proposes the adoption of guidelines respecting the use of that Section of the Act. The use of density incentives to achieve planning objectives is not new to the planning profession, nor to the City of Toronto. However, in some respects a question which might well be raised before considering the specific request of Council is: should City Council secure public benefits (facilities, services and matters) through the use of density incentives at all? I pose this question primarily because I believe there is at least some measure of public opinion which would respond in the negative because of a perception that the social costs of density incentives are, or have been, greater than the social benefits received in return.

As I discussed in my November 26, 1987 report on "Assisted Housing: Options for Private Sector Involvement and Section 36 Guildelines", at present the City has three general avenues it could pursue in order to achieve planning objectives in the form of the provision of facilities, services and matters: 1) direct expenditure of tax dollars; 2) exactions (levies and requirements); and/or 3) density incentives. The last two, being development dependent, offer the opportunity to secure public benefits without direct public expenditure.

Also as noted in my November 26th report, the City has only very limited authority to exact levies or other requirements from the development approvals process, and although not entirely free from doubt, it appears that any expansion of those powers would require special legislation. In a practical sense, then, Council appears to have, in the short term at least, only two options: spend tax dollars directly (or induce other levels of government to spend theirs) or authorize increases in density in exchange for public benefits.

In recent years, the City has secured certain benefits through existing bonus provisions of the Plan, heritage building preservation being a notable example, as well as assisted housing.

At the same time, considerable experience has been gained and facilities, services and matters secured, through the negotiated site specific Official Plan amendment process. However, it appears that it is this latter process which has occasioned close scrutiny of the whole question of the appropriate use of increases in density in exchange for public benefits. Uncertainty respecting Council's intentions and the continued validity of the Plan, and concern over consistency and equity have been among the issues raised in this regard.

In the final analysis, these concerns could be addressed simply by stopping the practice of securing public benefits through the Official Plan amendment process. However, in addition to being an extreme response and a radical departure from past practice, it is questionable whether this would be either desirable or practical.

The use of density incentives is a valuable planning tool in a private market economy. In this context, a developer, acting rationally will not provide costly public benefits unless compelled to do so (through requirements) or induced to do so (through incentives). Abandoning density incentives, or increases in density in exchange for public benefits, would likely mean that many objectives of the Plan respecting, among other things, assisted housing, park space, heritage preservation and community and cultural facilities, would be more difficult to achieve.

I do not believe it would be prudent or practical to dispense with the use of density incentives, not only because I am convinced that incentives generally are a valuable and viable planning instrument, but also because I believe that much of the concern that underlay criticism of past practice has had to do largely with the nature of the process by which increases in density were authorized.

Partly in response to these concerns, but largely as a result of the natural process of learning and consolidating from our experience, important and positive changes have occurred in the last year in respect of the approach taken by this department to proposed increases in density in exchange for public benefits. In contrast to previous years, where increases in density were balanced against an overall 'package' of public benefits and objectives, more recently my approach, typified by the BCE Part II and embodied in the proposed guidelines for Section 36 set out in my November 26th report, has been to specifically identify an amount of density associated with a specific facility, service or matter.

What this approach affords over the previous one is an opportunity for a real public accounting of the process by which density

increases are authorized. This is an important and progressive step and, as will be discussed at some length in this report, I believe this process can be made even more accountable to the public and the development industry through the adoption of clearly defined criteria for the use of density incentives.

Before proceeding to a discussion of options for the implementation of increases in density in exchange for facilities, services and matters, I believe it would be useful to clarify an important distinction between the use of density incentives to achieve public objectives and an amendment to the Plan under Section 22 of the Act which may also involve an increase in density.

Section 22 of the Act authorizes a municipality to amend its Official Plan from time to time and prescribes the process which must be followed in so doing. Section 36 allows Council to provide for density and/or height incentives in exchange for public benefits so long as this has been provided for in the Plan.

The Act allows City Council to amend its plan to allow for increased density for solid planning reasons based on an appropriate study. However, when Council has determined that increased height and/or density may only be warranted where other objectives of the Plan are to be met, in the form of contributions towards certain facilities, services and matters, then the authority for this is now to be found in Section 36 of the Act.

This would not preclude Council from exercising both authorities at the same time, which is to say, amend the Plan to permit increased density in an area or for a site on the basis of an appropriate study, and also allow for further increases in exchange for benefits. What should be clearly understood, however, is that when the basis for allowing an increase in density is to achieve certain objectives of the Plan by securing specific services, matters and facilities, then the enabling authority resides in Section 36 of the Planning Act.

3. OPTIONS FOR THE PROVISION OF BONUSES

My November 26, 1987 report on "Assisted Housing: Options for Private Sector Involvement and Section 36 Guidelines" proposed a set of guidelines for the use of Section 36 and recommended a general amendment to the Official Plan respecting its use. The amendment as contained in the November 26th report is reproduced here in Appendix 1. The guidelines were intended to: 1) provide clear and readily accessible criteria for the use of density and height incentives under Section 36 of the Planning Act, and 2) establish a context for specific bonus provisions and policies

which might be added to the Official Plan from time to time either through general Part I amendments (such as the proposed Financial District assisted housing bonus), Part II or area plans (such as BCED, Markborough/Trizec and Bay Street in North Downtown) or through site specific amendments for particular applications.

In his report of Feburary 1, 1988, Mayor Eggleton noted that:

> "The Commissioner of Planning and Development in his Quinquennial Review follow-up report on Assisted Housing (November 1987) has touched on the need to more clearly define the process under Section 36. I support this and would recommend that he undertake an extensive examination of the options under which bonuses could be provided."

My November 26th report briefly discussed, in the context of the urgent need to seek effective methods to encourage private sector involvement in assisted housing production, the general advantages and disadvantages of two approaches to the securing of public benefits through density incentives: 1) the negotiated site specific process, which has to a large extent characterized the approach Council has pursued in recent years; and 2) the use of a comprehensive schedule of bonuses, an approach taken in a number of U.S. cities, most notably Seattle, Washington; Hartford, Connecticut and New York City. In some respects, these two approaches represent the extremes of a spectrum, but they are a useful starting point for a discussion of options under which bonuses could be provided.

The next sub-sections of this report examine these and other options in some detail, noting the advantages and disadvantages of each, and recommending the adoption of guidelines for the use of density incentives for inclusion in the Official Plan. Subsequent sections of the report provide an assessment of the application of the recommended approach to specific categories of benefits, within the framework of the proposed guidelines.

3.1 Negotiated Site Specific Official Plan Amendment

As noted above, the option of continuing the practice of providing for increased density in exchange for public benefits, such as assisted housing, on a site specific basis, in response to particular development applications is one which City Council could consider. The advantages of this option, which experience has demonstrated can be effective, are that it is flexible and provides for the maximum level of regulatory planning control. City Council, under this option, could respond to opportunities as they arise in the context of individual proposals and tailor the details of the bonusing arrangement to the particular development

project. It could be argued that in approving the World Trade Centre Official Plan Amendment, the O.M.B. implicitly sanctioned this approach as an appropriate means of implementing Section 36 bonuses. Because of the combination of a high degree of regulatory control and flexibility, this kind of negotiated development agreement approach is gaining some currency in the U.S., where a number of states are looking to California's 1979 Development Agreement Act as a model for securing public benefits.

The disadvantages of this approach, however, are several. In the absence of any overall framework in the Official Plan, the negotiated site specific amendment process can engender considerable uncertainty respecting the City's intentions and can give the impression that the underlying basis of the Plan is being subverted. It may also be difficult under this option to ensure that all land owners are being treated equitably and consistently. Finally, especially where there are no fundamental ground rules under this option, the process can be extremely time consuming (and costly) and require extensive professional staff involvement as each application is negotiated.

As noted in November 26th report, one way to mitigate the disadvantages of this approach would be for a municipality to establish general criteria for the use of density incentives, to provide a context for site specific negotiations. The guidelines set out in Appendix 1 of this report (Appendix 7 of the November 26th report) were intended to provide such a framework. This will be discussed in more detail in Section 4. By providing a context for the use of density incentives which clarifies Council's intentions, establishes the kinds of benefits for which a bonus may be appropriate, and sets out factors which must be considered in every instance, much of the uncertainty in the development approval process for both the development industry and the public can be reduced.

3.2 Bonus Provisions in the Part I Plan, Implemented through General Zoning By-law Provisions

This option is best represented by the comprehensive schedule approach to the granting of density and/or height incentives. As noted earlier, a number of U.S. cities have adopted such an approach and offer density incentives for a range of different public benefits, including affordable housing, plazas and public open spaces, daycare, human services, theatres, museums and even urban design features and the provision of retail space at grade. Partly because of differences in the legal basis of Official Plans between the Ontario and some U.S. states, when a U.S. municipality decides to introduce bonusing, it is sometimes compelled through its enabling legislation to implement a comprehensive schedule in

its zoning ordinance, leaving little discretionary power to zoning boards or planning commissions.

Although City Council has not generally pursued this approach, it should be noted that currently in the City's Official Plan and Zoning By-law there are three bonus provisions which have been offered in this manner. The existing City of Toronto Act 25% assisted housing bonus in the Mixed Commercial-Residential Areas of the Central Area (and through Part II Plans in some parts of the City) allows both in the Plan and Zoning By-law for increased residential density where the owner agrees to use the additional density to provide assisted housing. (Recent amendments to the City of Toronto Act and the City's Plan, approved by the legislature on May 24, 1988 and before Minister of Municipal Affairs respectively, will clarify that this alternate density is not available to other than the non-profit sectors). In addition, both the Plan and Zoning By-law provide for an as of right bonus for the provision of community services and facilities and internal pedestrian walkways in certain areas of the Central Area. The amount of bonus density for the community services and facilities varies by the Official Plan designation, and the additional floor area may not be used for any purpose other than one or more community services and facilities.

While these bonuses do not provide additional income producing floor area for a private developer in exchange for the provision of the space to a community service user, and for this reason might not be considered true incentives, the approach to implementing these types of bonuses is one with which the City has had some experience.

The advantage of this type of approach is clearly that it affords the greatest consistency and certainty in the development process for the public and the development industry alike. If, as in many U.S. cities, the introduction of density incentives is undertaken on a comprehensive basis, and once in place exceptions are not entertained, this option cannot be rivalled in its ability to provide predictability, equity and certainty.

On the other hand, this approach has some serious drawbacks. First, it requires extensive and time consuming background work leading to complex, and potentially contentious amendments to the Official Plan and Zoning By-law. The difficulties involved in implementing a density incentive system on this basis can be daunting, and the prospects for its success uncertain.

While offering the greatest certainty for the development approvals process, this option is conversely the most inflexibile, and ironically could over time, elicit applications for amendments

to deal with site specific circumstances. If such applications were approved, this in turn, would have the undesirable effect of undermining the very certainty associated with the comprehensive schedule approach. That such applications would come forward is an inevitable result of another weakness of this option, which is that it is not necessarily suited to all types of benefits which Council may wish to secure.

A comprehensive, schedule approach may not be appropriate in terms of securing such one-of-a-kind benefits as The Design Exchange (as a means to showcase the interior of the Old Toronto Stock Exchange building) or the CBC Broadcast Centre project. While both these benefits could be losely termed 'cultural facilites', they are in fact very different in terms of their particular requirements (space needs, for example). They are also not uses that would likely be duplicated or that Council would necessarily like to see duplicated, an effect that could be encouraged under a generic "cultural amenity bonus" implemented on a comprehensive schedule basis.

There are also benefits that may be appropriate in one location or site, but not another, such as park space or significant underground connections, that are not easily accommodated through the comprehensive schedule option, especially when implemented through general provisions in the Zoning By-law. In this case it may well be that benefits of dubious value could result, a problem which characterized New York City's plaza bonus.

3.3 Part I Provisions, Implemented on Site Specific Basis through a Rezoning

This option offers some of the advantages of the previous option in that by providing a comprehensive schedule in the Part I Plan, it also affords a high degree of certainty and equity in the development approval process. It provides clear signals to developers and the public about what can happen and leaves only the details to specific development applications. An additional advantage, however, of this approach is that it introduces a degree of regulatory control that may be desirable in some instances. An example of how this approach would work can be found in our own Official Plan. Section 1A.42(b) allows for historical bonuses (an exemption of floor area retained) for preservation of designated historic buildings in certain parts of the Central Area. To ensure that City Council is satisfied with the particular preservation solution, and that the historic building is integrated appropriately in any new development making use of it, this bonus is only available upon application for a rezoning by the owner of the lot.

This option, however, also shares some of the major disadvantages of the previous comprehensive schedule approach. Specifically, this option would involve the same extensive initial background research to establish the bonus provisions, and be subject to the same complex and uncertain Official Plan amendment process required to make the provisions available in the Plan. Furthermore, the identical difficulties surrounding one-of-a-kind benefits and/or certain specific types of benefits would still obtain with this approach.

3.4 Part II or Area Based General Provisions, Implemented either in the Zoning By-law or through Site Specific Rezonings

A process similar to those set out in 3.2. and 3.3 could be pursued on an area basis through a series of Part II studies which examined, in depth, the objectives and needs for a particular area and which evaluated appropriate implementation mechanisims and strategies in that context. The Part II Plan could then be implemented either through general amendments to the Zoning By-law for the particular area, or through the site specific rezoning process, or through some combination of the two, depending on the area objectives.

The advantages of this option is that it can be implemented incrementally, based on area studies, and therefore can be less complex than the general Part I approach and would involve less extensive background research. Tailored to the particular area, this approach can provide for a more sensitive and focussed process.

The major drawback of this option, however, is that significant opportunities in areas not covered by Part II Plans may be lost. Limited staff resources could make this option dependent upon the establishment of a priority list for Part II studies.

3.5 Conclusion: Establish Guidelines for Bonusing and Proceed to Implement on a Part I, Area or Site Specific Basis as Appropriate

The City's practical experience over the past ten years with securing public benefits in exchange for increased density suggests that this last option, which establishes reasonable and clearly understood parameters for the use of incentives, may be the most effective foundation for proceeding with bonusing and the most successful in addressing all the various concerns surrounding its use. This option provides a good balance among such factors as: appropriate level of regulatory control, consistent and equitable treatment of land owners, certainty for the public

generally and flexibility for Council to respond to special circumstances.

The criteria (as set out in Appendix 7 of my November 26th report; Appendix 1 of this report) provide important ground rules to ensure that similar initiatives in the future will be pursued in a consistent and equitable manner, whether a particular bonus is implemented on a site specific, general Part I or Part II area basis. Provided that these or similar criteria are consistently applied, as would be the case if they formed part of the Official Plan, most of the concerns outlined in previous sections could be resolved. This option also has the additional advantage of allowing City Council to proceed prudently and incrementally with the use of this valuable planning instrument, continuing to gain and consolidate practical experience over the coming years.

In essence this approach was the proposed course of action that was suggested in my November 26th, 1987 report. Section 6 of this report summarizes some proposed changes to the guidelines for the use of Section 36 of the Planning Act that had been set out in the November report, as a result of comments received since its publication and issues raised elsewhere in this report.

The next section of the report will examine in some detail the basis for the proposed Official Plan amendment that would establish the ground rules for the use of bonuses. Subsequent sections of the report will then examine the particular issues surrounding implementation of bonuses for each category of public benefit set out in the proposed guidelines, namely: assisted housing; non-profit community, cultural and institutional facilities; heritage preservation; public open space; significant pedestrian connection; and "other" facilities, services and matters.

4. FURTHER COMMENTS ON THE NOVEMBER 26th PROPOSED SECTION 36 GUIDELINES FOR INCLUSION IN THE OFFICIAL PLAN

Density bonusing, the granting of increases in density in exchange for amenities and public benefits, can be a valuable and effective tool to achieve objectives widely regarded by the public as desirable, but which might not otherwise be realized, and can help to make an Official Plan, an essentially static regulatory instrument, into a more dynamic and positive one. However, this planning tool must be applied with some prudence in order to ensure that:

1) the planning basis for any particular designation or area is not subverted;

2) reasonable and appropriate density limits are maintained;

3) the proliferation of benefits of dubious value do not result; and

4) the expectation of the planning process that it provide consistency, equity and predictability is not thwarted.

The guidelines proposed in my November 26th report would generally, in my view, adequately safeguard against the potential undesirable effects of the use of incentives. These guidelines would apply whether the process involved was a site specific Official Plan amendment, a general Part I Plan provision or an area based or Part II Plan provision. In other words, the guidelines are criteria for amending the Plan.

This latter point is particularly important. In and of themselves, the guidelines do not introduce bonuses. Once these guidelines, should they be adopted, become part of the Official Plan, it would still be necessary to further amend the Plan to introduce any particular bonus provision, whether it is on a site specific, area or general basis.

With the requirement that all bonus provisions (other than those which are, of course, already enshrined in the Plan) must be introduced through an Official Plan amendment, appropriate review and consultation among concerned parties is assured, including the Metropolitan Council and the Ministry of Municipal Affairs.

The purpose in using Section 36 at all is to assist in realizing the objectives of the Official Plan. For this reason, the preamble to the guidelines proposed in the November 26th report states that Council's intention with respect to the use of, density and/or height incentives is to realize the objectives of the Plan with respect to certain facilities, services and matters. Bonusing should be seen as a tool to achieve objectives that have been specifically articulated in the Plan, not simply a means to respond to worthy causes. It is essential that the planning basis for this policy instrument remain clear.

4.1 What Should be Bonused

Guidelines should clearly establish criteria that can assist in defining the kinds of facilities, services and matters for which a bonus might be appropriate. The objective is to ensure that there is a certain predictability about which benefits may be eligible for a bonus and which benefits would not. Accordingly, the proposed guidelines included a list of categories of benefits as

well as criteria respecting the form of the benefit. The following were listed:

a) Assisted Housing;

b) Heritage Preservation;

c) Non-profit community, cultural and institutional facilities;

d) Parks and Open Space beyond that which might otherwise be required pursuant to the Planning Act;

e) Significant pedestrian connections in accordance with major public objectives; and

g) Other facilities, services and matters which may not otherwise be required to be provided pursuant to the Planning Act, and which are considered to be advisable by Council following its consideration of the appropriate planning study.

The guidelines go on to further clarify that bonuses should be used to promote the provision of land, buildings or parts of buildings, structures and physical spaces for specified purposes, and that in the case of assisted housing, in particular, the contribution should take the form in the first instance of the allocation of land for assisted housing on the development site for which a bonus is to be given, followed by the provision of land off-site and/or cash payment in lieu of the provision of land.

More detailed criteria respecting assisted housing were proposed compared to other categories of benefit essentially because the emphasis of the November 26th report was on securing private sector involvement in the production of assisted housing. However, the underlying principle of the provision and maintenance of physical spaces, land or buildings is one which should govern all benefits received in exchange for density and/or height incentives. Bonuses should not be given where the contribution takes the form of funding for on-going program costs or expenses and should not be a substitute for operating funding which is the general responsibility of other levels of government.

In arriving at this criterion, discussions were held with staff of the Ministry of Municipal Affairs who are currently in the process of developing their own guidelines for the use of Section 36. These further guidelines should elaborate and give more direction to municipalities about the use of Section 36 beyond that previously contained in "Guideline 8: Zoning and Other Land Use

Controls" issued in 1983, at the time of the enactment of the new Planning Act.

It was clear from discussions with Ministry staff that the intent of Section 36 was not seen to be to promote the use of bonuses for on-going program or operating costs. The position of the Ministry is perhaps best expressed in their comments to me respecting the BCE Place application and the proposed use of the Bank of Montreal building.

> "We are also interested in ensuring that the public benefit provided is not an on-going operating expense normally, and appropriately, provided under a government program. If density bonuses were awarded in exchange for subsidizing the on-going program costs normally provided by government programs, we feel that, in the long run, this would be a disservice to the programs themselves because it would encourage the government to shift its fiscal priorities, in part, to the private sector with no assurance that bonuses will continue to be desired.
>
> As well, we are concerned about the possibility of signalling to the development industry that municipal interests in urban form and the impact of further density on roads and other infrastructure are less important than the municipal interest in raising revenues for on-going programs."

Aside from the concern of the Ministry that density incentives for operating or program costs is not a legitimate use of Section 36 because of the potential to merely substitute for on-going funding responsibilities of other levels of government, there are additional concerns which arise when bonusing extends beyond the provision of physical spaces (land and buildings) to on-going operating or program costs. If funds derived from density incentives were used for program operating costs, issues such as accountability and control over actual programming would arise. In fact, such a use of Section 36 would probably require City involvement in this area to ensure public accountablility. Moreover, because there is no clear cut or definible limit to the provision of on-going program costs, the City's ability to control the use of bonuses generally could be seriously impeded. With physical spaces, land buildings, parts of buildings, on the other hand, a clear distinction can be made: once the space or land is delivered (provided to the City) the obligation of the developer has been discharged.

In addition to being generally consistent with discussions to date with Ministry staff, the principle of physical space (in the form of a density incentive) in exchange for physical space (or cash to

provide for and maintain a physical space as will be the case, for example, with the Old Stock Exchange Building), is a simple means of distinguishing among potential public benefits, and provides an important means of ensuring a positive public perception of the efficacy of a bonus program. Tangible, visible public amenities ensure that a proper and relatively simple public accounting of the impact of a bonus scheme can be made.

An additional principle respecting what should be bonused and which should guide the use of Section 36 bonuses is that bonusing should not be used to secure benefits which may be otherwise legitimately required by Council through existing legislation or through the Official Plan.

For example, Section 40 and Section 41 of the Planning Act enable Council to impose certain conditions in respect of the development or redevelopment of land. Under Section 40, widening of roads, access facilities, loading and parking facilities, walkways, lighting and landscaping, etc., may be required by the City. Section 36 bonuses should not be used to achieve such facilities. Under Section 41, Council may require that land (up to 5% of the land to be developed for residential and 2% for commercial) be conveyed to the City for parks or other public recreational purposes. Alternatively, Council can require cash-in-lieu. Again, it would not be appropriate to bonus for the provision of such parkland or cash. In addition, the City's Official Plan and Zoning By-law also require, in certain parts of the Central Core, the provision of public "common outdoor space". Since it is within Council's authority to simply require this public outdoor space, it would not be appropriate, in my view, to bonus for it. On the other hand, where, for example, Section 41 has been utilized to its maximum and where the zoning provisions for common outdoor space met, then if additonal park space or public space is deemed to be required, only then and only in respect of any additional increment should a density or height increase be considered. While I have referred in particular to park space as one example where Council has explicit authority to make requirements, the principle of authorizing increases in density only for the provision of any facility, service or matter beyond that which could otherwise be required should generally be applicable to all categories of benefit.

A final but critical aspect to the question of what should be bonused, which was not fully explored in the November 26th report nor clearly expressed in the guidelines proposed there, deals with certain facilities or matters which should be required to be provided in conjunction with an increase in density, but for which no direct or specific bonus should be calculated. In the introduction to this report, I noted that my recent approach to

increases in density, which specifically identifies an amount of density that is to be associated with a particular facility, service or matter, differed from previous years where a 'package' of benefits was balanced against an overall increase in density. I believe this is an important and progressive change which provides for enhanced public awareness of the basis for increases in density and allows for clear accounting of the effectiveness of a bonus policy. A potential drawback to this approach, however, is the possibility that it could foster the expectation that any matter which Council may wish to secure where an increase in density is sought, or that should be secured in the interest of good planning, should be compensated for with a direct, calculable density bonus.

In a number of instances in recent agreements under Section 36, matters have been secured for which no direct bonus was calculated and for which a specific or calcuable bonus would not be appropriate. I am referring in particular to the environmental and infrastructure agreements in the case of Massey-Ferguson and public art (1% for art) in the BCE Place agreement. However, many other matters, such as compliance with noise impact statements and archeological programs, waste recycling programs and streetscape improvements are all matters which should be required in every case where an increase in density is being authorized under Section 36, unless it has been determined, on the basis of an appropriate study, that such matters are unnecessary or inapplicable. Although no explicit bonus would or should be attributed to these matters, it should be understood that these matters are essential where an increase in density is to be authorized in exchange for the provision of one or more of identified categories of benefits. In and of themselves these matters should not be considered as justification for any density or height increase.

To ensure that it is clear from the outset that specific matters will also be required to be provided, where appropriate, in connection with any increase in density under Section 36, I have proposed an additional guideline in the revised guidelines contained in Appendix 6.

4.2 What Kind of Incentive - Commercial vs. Residential

The November 26th report set out the principle that commercial bonuses should not generally be considered outside the Financial District, except where an appropriate planning study has concluded that such incentives would be consistent with planning objectives for the area and the City as a whole.

The Financial District is designated in the Plan as the City's priority area for office development. At the same time the Plan also states that the Financial District should not be relied upon in meeting the City's housing objectives. For these reasons, commercial incentives in the Financial District which provide for increased commercial floor area in exchange for facilities, services and matters which assist in achieving other objectives of the Plan, are generally consistent with the goals for the Financial District.

The same cannot be said for the other mixed-use areas of the Plan, that is: the Low, Medium and High Density Mixed Commercial-Residential Areas. The general availability of commercial density bonuses in these areas could ultimately call into question the mixed-use objectives of the Official Plan, particularly if the increase in commercial density were accompanied by a corresponding decrease in residential potential, a likely scenario if overall built form objectives were also to be met.

An additional concern surrounding the use of commercial incentives outside the Financial District relates to their potential impact on the ability of non-profit housing producers to bid for land within the mixed-use areas. Despite the presumed competitive edge provided by the existing 25% bonus under the City of Toronto Act for non-profit producers, the avilability of commercial bonuses in those areas in exchange for various benefits to the private sector could place the non-profit producers at a significant disadvantage in the bidding process.

This, of course, is not to imply that commercial incentives would be inappropriate in all instances outside the Financial District. At present, for example, as will be discussed in later sections of this report, the existing Heritage preservation bonus permits non-residential density in excess of that ordinarily permitted in mixed commercial-residential areas of the Central Area at the election of the land owner. However, while this general provision exists, the appropriateness of any such additional incentives should be assessed and introduced only in the context of a Part II or area planning process.

It is clear, for example, that not all of the High Density Mixed Commercial Residential areas in the Central Core have developed in the same way over the past ten years. University Avenue, Bay and Bloor Streets all have very unique characteristics and while they may share the same general Official Plan designation (with some modification in the case of Bloor Street) there are clear grounds for defining their individual characters and establishing appropriate goals and objectives through a Part II Planning process. As part of such a study, the potential use of Section 36

bonuses involving increases in commercial floor area could be considered.

My recently released Part II proposals report for Bay Street in North Downtown is an example of this kind of planning exercise, although in this case I have concluded that commercial increases would not be appropriate and have instead proposed a Section 36 incentive of increased residential density in exchange for the provision of land for assisted housing.

On the other hand, in my study of the Bloor/Yonge area (Development Guidelines for the area bounded by Bloor Street, Church Street, Charles Street and Balmuto Street, May 18, 1987) I concluded that increased commercial densities at the immediate southerly corners of Yonge and Bloor may be appropriate, subject to further design and massing studies. An important consideration of those further studies will be the potential use of Section 36 as the basis for securing important objectives specifically related to that area.

The effect of establishing criteria such as this respecting the type of density incentive, commercial versus residential, would be to require that an appropriate planning study, such as a Part II or area study, be undertaken before the use of commercial incentives could extend beyond the Financial District. In this way, area planning objectives as well as the overall office policy goals of the Part I Plan can be properly safeguarded.

The November 26th report also briefly referred to two major difficulties involved in the use of residential density incentives, that is, an increase in market residential density in exchange for assisted housing or some other service, facility or matter. The first relates to the situation, not uncommon in the Central Area, where an area is already zoned to the maximum density permitted by the Plan. In some cases, if it is generally not considered desirable to increase densities further (in residence areas or low density mixed commercial-residential areas), it would not be feasible to offer density incentives under Section 36.

The second difficulty with implementing residential density incentives results from the continued uncertainty, referred to in a number of previous reports, including the 1986 Quinquennial Review, respecting residential density limits in certain mixed-use districts, particulary the Medium and High Density Mixed Commercial-Residential Areas of the Central Core. To briefly restate the problem, recent amendments to the Official Plan and Zoning By-law now make it possible to calculate residential density on the basis of either units per hectare (uph) or floor

space index (fsi) in all Low Density mixed-use districts across the City and in the Medium and High Density Mixed-Use districts of the Central Core. The existence of these two options, especially in the higher density areas where the discrepancy in permissible floor area between the two options can be significant, has led to a number of applications for O.P.A.'s to permit a combination of the two systems.

The problem is most conspicuous, of course, on Bay Street in North Downtown, but has also occurred in other parts of the Central Area recently (108 Chestnut Street, One York Quay, Cookes Church and 75 The Esplanade). The resulting climate of uncertainty about residential densities in these areas make the implementation of a residential incentive extremely unlikely, if not impossible. Before any bonus involving increased residential density could be made generally available in these areas, the problems associated with this issue could have to be resolved. Alternatively, as with the proposed Bay Street Corridor Part II, the issue would have to be addressed on an area basis. Once resolved, it would be relatively straightforward to implement a residential density incentive if, on the basis of an appropriate study, this was seen to be desirable.

Although in the Low Density Mixed Commercial-Residential Areas a similar uncertainty about density limits has not developed (largely because of built form controls, and lower densities which reduces the discrepancy between the two systems for calculating density), the very nature of these strips suggests that any bonuses involving increased residential density should properly be evaluated in the context of local studies.

Given the proximity of these strips to adjacent low density residence areas, redevelopment in the commercial strips that are zoned low density CR can impact significantly on surrounding neighbourhoods, and any general increase in density must therefore be carefully reviewed. It should also be noted that existing commercial strip densities were largely determined on the basis of built form considerations, with height limits establishing an important safeguard. Consequently, in general, increased density on these strips would likely need to be accompanied by increased height limits.

These issues, among many others, are ones that I am examining in the context of my review of commercial strips requested by Council in response to Alderman Gilbert's report "Redevelopment of Toronto's Main Streets", December 3, 1987. I believe that the matter of a general approach to density bonusing for various benefits along commercial strips, such as assisted housing,

heritage preservation and community facilities, could best be addressed in the context of that study.

4.3 Factors to Consider in Determining the Size of a Bonus

Criteria for determining the size of a bonus should also be set out, as proposed in my November 26th report, to ensure that a consistent approach is taken to this important aspect of density incentives. If the factors which must be taken into account are clearly enunciated, then whether a bonus is implemented on a general, site specific or area specific basis, the consistent and equitable treatment of land owners in the development approvals process can be assured. The factors for which Council should have regard fall generally into two categories: 1) impact and 2) value.

Planning Impact I dealt earlier with the matter of the nature of the incentive (commercial or residential) as it affects the underlying planning basis for any particular site or area. Additional factors which are critical to consider in the context of increased density relate to appropriate builtform and microclimate conditions (wind, shadow, etc.) as well as transportation and other hard and soft service impacts. These factors, among others, should be assessed in every case where a bonus provision is proposed to be implemented.

In the case of a general Plan provision, especially where consideration is being given to implementing a bonus as a general Zoning By-law provision, an assessment of the cumulative impact of a bonus provision with respect to all of the factors noted above should also be undertaken, to ensure that acceptable overall built form conditions will result and that the municipal infrastructrue is not adversely affected and/or necessary improvements have been planned for and will be undertaken.

Relationship of Value of Bonus to Cost of Providing the Benefit

It was proposed in my November 26th report that a basic principle for the use of Section 36 incentives should be that the estimated market value of the increase bear a satisfactory relationship to the cost of providing the public benefit. The appropriate value relationship was further defined only with respect to assisted housing, where it was proposed that this relationship should be no greater than two to one, that is, one half of the value of the increased density is to be returned to the public in the form of an assisted housing contribution. For other categories of benefit, a lesser incentive was proposed, although the guidelines did not specify a particular value relationsip in these other cases.

In the BCE Place Part II, which represents the first occasion in which the bonus provisions of a Part II plan were developed in accordance with the guidelines for Section 36 proposed in my November 26, 1987 report, the method involved in determining the amount of bonus for each benefit reflects these principles respecting the value relationship. In that case the size of the bonus involved an estimation of both the approximate value of increased commercial density in the Financial District and the cost of providing the public benefits for which bonuses were considered appropriate. The values used in that analysis were not specific to the particular development on BCE Place, but were transferrable fairly generally throughout the Financial District. In that case, in recognition of the fact that the benefits (other than assisted housing), also enhanced the development and therefore had intrinsic value to the developer, the objective was generally to compensate the owner only to the extent of the cost of providing the facility, service or matter by offering an equivalent value in revenue producing space. It was only with respect to assisted housing that the incentive was enhanced and the developer offered revenue producing space equal in value to approximately twice the cost of providing the assisted housing contribution.

The proposed relationship for any assisted housing incentive sets a standard measure, albeit only a very general one, leaving a fair degree of latitutde in future situations to determine the appropriate relationship. While there is some potential in establishing only general guidelines for the value relationship of incentives to inject a degree of uncertainty in the development approval process, I believe this latitude may be necessary in order to be able to establish value relationships based on priorities which might 1) change over time, and 2) vary from one area of the City to another.

4.4 The Stacking of Bonuses - Establishing the Upper Limit

One important aspect of the use of density incentives not fully addressed in my Novemer 26th report is the potential for stacking bonuses where more than one bonus is to be permitted. The issue was one which was briefly discussed in the context of the proposed assisted housing bonus policy for the Financial District.

Clearly, establishing a limit to the stacking of bonus density should be considered, especially where a number of bonuses are proposed, among which a land-owner is expected to elect some bonuses but not all. Accordingly, some criteria respecting this aspect of the use of Section 36, as well as other existing bonus provisions of the Plan, should be explicitly stated in Council's criteria and embodied in the Official Plan.

Although City Council requested that in this report I include a schedule of maximum bonus allowances, i.e. upper limits to the stacking of bonuses, I do not believe that this is either feasible or appropriate at this time, except, of course, with respect to the Financial District, where I have already given consideration to this issue and recommended appropriate upper limits, as discussed further below.

Several difficulties arise in attempting in advance to determine an appropriate upper limit for maximum density bonuses. The first is that not all bonuses in all use districts will provide for the same kind of incentive. As discussed earlier, depending on the area, commercial bonuses may be appropriate whereas in others, if bonusing is appropriate at all, incentives may only be in the form of additional revenue producing residential density. In some instances, as is in the situation with some existing bonus provisions of the Plan, both commercial and residential incentives may be offered.

A case in point would be the Central Area provisions for High Density Mixed Commercial-Residential Areas. In these areas bonuses are offered for heritage preservation (1.125x) community services and facilities (.65x) and assisted housing (the 25% bonus under the City of Toronto Act). With respect to the first bonus, the extra floor area could be for commercial or residential purposes, the second is essentially for institutional density, while the third allows for additional residential units (with no limit on total residential floor area).

At present there is no provision in the Plan that would prevent a land owner from utilizing all of the available bonuses in a High Density Mixed Commercial Residential area. Together these bonuses would allow for a significant increase in overall floor area. For example assuming a mixed-use building in which the average residential unit is 100 square metres, if an owner exercised all the bonus options currently available under the Plan, the gross floor area of the building could increase by as much as 33%. Similar, but lesser bonus provisions apply in other mixed-use districts of the Central Area as well as some Residence Areas.

Several factors militate against the establishment of an upper, percentage limit, for the stacking of bonuses. In the example noted above for High Density Mixed Commercial Residencial areas an increase of about 33% can be achieved (because of the uph system this can vary). Of this 33% some would be residential and some non-residential. In the case of the proposed Financial District bonus policy I have proposed that the non-residential density could be increased by up to 50% (from 8 times to 12 times) through the stacking of heritage, community service and assisted housing

bonuses. On the other hand I have not recommended that the overall density (combined residential and non-residential) be permitted to increase by this amount for built form reasons, and in that instance have proposed that residential density be reduced as commercial density is increased.

Decisions as to what kind of incentive to offer (commercial and non-residential), considerations respecting built form and other impacts as well as local concerns will all influence what an appropriate maximum density should be for any bonus allowances. For these reasons, I believe this is a matter which should be dealt with at the time any particular bonus provision is recommended.

While it may not be possible to establish maximum limits at this time, the question remains as to what process should be followed to ensure that in every instance where bonuses under Section 36 are offered, consideration is given to this matter. I believe it would be appropriate to include a guideline, in addition to those proposed in my November 28th report for the use of Section 36, that would identify the setting of maximum limits for the stacking of bonuses as a factor that should be assessed. In this way, before implementing any Official Plan provision which provides for density incentives, whether on a site specific, general Part I or a Part II basis, the issue of limits would be addressed and resolved in the context of the specific objectives for an area and the City generally.

The Financial District - Maximum Bonus Allowances

As noted above, in the context of the proposed assisted housing bonus for the Financial District, I have proposed an upper limit to the stacking of non-residential density bonuses of 12 times coverage. As requested by the Land Use Committee, I will be reporting further on this bonus policy in the near future at which time I will be recommending this upper limit for the Financial District. However, it would be useful here to review the basis for the proposed limits for that particular policy. In my November 26, 1987 report, three maximum limits were proposed respecting: 1) the maximum allowable bonus for assisted housing (2 times coverage); 2) the maximum overall non-residential density that could be achieved through stacking all non-residential bonuses available in the Plan, including the proposed assisted housing bonus (12 times coverage); and 3) the maintaining of overall bulk limit (combined non-residential and residential) of 12 in the mixing formula. With respect to the last limit, this was to be achieved by requiring that in implementing the proposed assisted housing bonus on any site in the Financial District, there be a reduction in the residential potential commensurate

with the increase in commercial potential (one conventional housing unit for every 100 sq.m. of commercial floor area). In this way, the potential overall bulk of development in the Financial District would not exceed that permitted before the authorization of the assisted housing bonus.

The maximum limit for non-residential density of 12 times coverage was considered to be acceptable for three reasons. First, 12 times coverage is the maximum non-residential density that can be achieved through a density transfer in the Financial District. Second, that density ceiling allows for the possiblity of stacking two or more bonus provisions (Heritage Preservation, community services and facilities and or assisted housing). Third, the transportation impact of permitting the additional potential density of 2 times for the assisted housing bonus, when added to the potential from other bonuses, was considered to be acceptable, as discussed further below.

The limit of 2 times extra non-residential density for the assisted housing bonus was considered appropriate largely to allow for the possibility that the existing heritage bonus under 1A.42 of the Plan could also be exercised without exceeding the overall limit of 12 times coverage. As will be discussed in subsequent sections of this report, there may also be in future additional bonus provisions that could be applicable in the Financial District (such as workplace daycare) that could also be exercised in conjunction with the assisted housing bonus. However, the maximum upper limit for non-residential density, including all bonuses should not exceed 12 times coverage.

The impact on the transportation system of the bonus provisions proposed in my November 26, 1987 report for the Financial District was also considered in establishing maximum limits. I will be addressing this and other issues respecting transportation more fully in a forthcoming report on transportation policy as requested by City Council at its February 8, 1988 meeting. However, at this time it is appropriate to reiterate the basis for my assessment that bonuses which increase densities from 8 times coverage up to 12 times coverage could be considered in the Financial District.

The additional development potential added by permitting bonuses which in some cases could result in buildings up to 12 times coverage in the Financial District could add marginally to the rate office of growth in the Core. (For a full discussion of the potential supply-side effect of increasing development rights, refer to pages 34-36 in the 1986 QQR Background paper No. 8. This effect was one which was also noted by Jerold Kayden in his 1978 study of incentive zoning in New York City.) However, as I

have previously noted in numerous reports, including the 1986 QQR, transportation improvements will likely be needed in the future to adequately serve the existing long term development potential of the Central Area. To the extent that commercial bonus density is taken up, and the rate of office growth marginally increased, the time frame for needed transportation improvements could be moved closer. It should be understood, however that the improvements are primarily required to accommodate the long-term growth of the Central Area as currently permitted under existing planning policies.

The potential for a long-term imbalance to develop between the development capacity of the Central Area and the capacity of the transportation system serving it has resulted in the need to recommend and study a number of Central Area road and transit improvements and undertake a review of the City's transportation policies. While the decision to approve the recommended bonus provisions for the Financial District should reinforce Council's commitment to ensure that transportation improvements are provided when they are needed, it could be misleading to attribute the need for such improvements solely to the approval of the proposed bonus provisions.

4.5 Priority to Location Dependent Benefits

Where it is proposed to provide for a number of incentives in an area, among which a landowner is to choose some but not all such bonuses, an important objective will be to ensure that site specific benefits, i.e. ones that can only be achieved on site and if not secured could not be provided elsewhere, be secured as a priority over less location dependent benefits.

An excellent example of this kind of benefit is heritage preservation. If a bonus is available for heritage preservation in an area where increases can also be authorized for other benefits and it is possible to achieve the maximum limit through these other benefits, then there is a risk that the heritage preservation objective, which can only be achieved on the site upon which the building is located, will not be met.

To ensure that this matter is given appropriate consideration, I have proposed an additional criterion respecting the securing of location dependent benefits as a priority where this may be necessary.

This section of the report has summarized the proposed guidelines contained in my November 26th report, elaborated on the reasons for the specific criteria, and where appropriate recommended additional criteria. The following sections of the report examine

in more detail the various categories of bonusable items as proposed in the Section 36 guidelines, and describe the most appropriate process for implementing Section 36 bonuses for these categories.

5. SPECIFIC FACILITIES SERVICES AND MATTERS - OPTIONS FOR IMPLEMENTATION

This section of the report examines in more detail the processes that may be involved in establishing specific bonuses for specific categories of benefit. It is assumed for the purposes of this discussion that the proposed Section 36 guidelines would be in place to provide an appropriate framework. However, this section of the report goes on to assess what would need to be done, and what processes would be involved, in developing bonuses under the various options of site specific, general Part I and Part II amendments.

5.1 Assisted Housing

City of Toronto Act and Section 36

The November 26th report discussed at some length the reasons why the existing assisted housing bonus provisions under the City of Toronto Act had failed to engage the private sector in the production of assisted housing. It also described the recent amendments to the Act and the proposed amendment to the City's Official Plan that would make it clear that the additional density for assisted housing under the Act would be available only to legitimate non-profit housing producers, and not the private sector. (The term assisted housing is also to be changed to social housing).

These amendments essentially acknowledge the City's experience over the past eleven years with the City of Toronto Act alternative density provisions which had demonstrated that the private sector could not effectively make use of the bonus provisions established under that authority. These provisions comprise the 25% bonus in the mixed commercial-residential areas. Within the Central Area these bonuses are generally permitted as of right, while outside the Central Area, many Part II plans provide that the bonus is only to be permitted through a rezoning.

It is important to understand the fundamental differences between the City of Toronto Act legislation as proposed to be amended and the use of incentives to the private sector under Section 36 of the Planning Act, and to appreciate that both instruments are necessary and complementary components of an effective assisted or social housing policy.

The City of Toronto Act, as proposed to be amended, among other things, allows the City to establish alternative densities for assisted or social housing which are higher than for private market housing. These higher densities are intended to provide an essential competitive edge for the social housing producers in the bidding process for residential land. Without this edge, it is unlikely that the social housing producers could reasonably compete for land in the areas where the bonus applies.

Having provided for this competitive edge through the City of Toronto Act, which has demonstrated a real, albeit modest, potential to generate social housing units over the past ten years, it is imperative that any bonus provisions under Section 36 offered to the private sector to promote their involvement in assisted or social housing production (in the form of land and/or cash contributions) not be allowed to undercut the potential effectiveness of the City of Toronto Act bonus for the non-profit sector. These bonuses should be viewed as a system that together will result in the production of more social housing than either could alone.

Accordingly, an important consideration in developing a residential bonus for assisted or social housing under Section 36 (which would offer to the private sector additional income producing density for market housing in exchange for land for social housing) should be an assessment of the impact on the potential effectiveness of the City of Toronto Act bonus for the non-profit sector. Moreover, before implementing such a residential bonus, Council should be generally satisified that alternative densities under the City of Toronto Act cannot reasonably be established in order to make that instrument effective, given built form and other planning considerations which may be applicable.

This, of course, is most pertinent when consideration is being given to developing a general Part I or Part II bonus provision. In the case of site specific applications the issue is unlikely to arise, since, where a specific and privately owned property is involved, and the applicant is seeking increased market density, the use of the City of Toronto Act (as amended) would not appear to be a viable instrument. In framing general provisions, however, this would be an important consideration.

On-Site Allocation vs. Off-Site Land

In developing a residential density incentive under Section 36 for assisted housing, another important consideration would be whether to provide an incentive for on-site provision of land for assisted housing, or accept off-site contributions, with a cash-in-lieu

option. There are advantages and disadvantages to both approaches, as described in my November 26th report which would have an impact on which of these were considered appropriate. Briefly, the advantages to the on-site allocation of land are: 1) it does not require that the developer acquire another site in order to realize the incentive; and 2) it provides for a mix of market and assisted housing on a single site. The disadvantages however are that it would generally be useful only on larger sites where: a) a portion of the site could be allocated and b) the remainder of the site can accommodate the increased density in terms of built form and other impacts.

It may be possible, for example, in certain High or Medium Density Residence areas of the Central Core, to implement an assisted housing bonus under Section 36, whereas in others, for built form reasons or because of other impacts, it may not. These considerations suggest that the implementation of on-site bonuses in many instances would be most appropriately dealt with in the context of an area specific planning study, as opposed to a general Part I provision.

On the other hand, a different set of considerations surround the issue of the provision of land off-site for assisted housing. These are: 1) the more bonuses are structured in this way, the more pressing will be the need to have clear criteria for evaluating proposed housing sites; 2) there is a possible inflationary pressure on the market for residential land as a result of increased competition for sites to be used for bonus purposes; and 3) since there is a limited supply of sites for assisted housing purposes, this later effect could lead to pressure on non-residential lands, particularly industrial lands, for conversion to residential use.

These potential disadvantages suggest that proceeding with Section 36 incentives for increased residential density in exchange for assisted or social housing land off-site, should be approached cautiously and incrementally, possibly through area Part II or site specific studies which focus on areas where particular difficulties have been experienced in developing assisted housing without such incentives (for example the higher density mixed-use districts of the Central Core).

Earlier in this report, in the context of the general discussion of the nature of the incentive (commercial v.s. residential density), I referred to the difficulties posed by implementation of a residential density incentive in certain of the Mixed Commercial-Residential areas, where two systems for calculating residential density exist, in particular the Medium and High Density Mixed Commercial-Residential Areas of the Central Core.

Before consideration could be given to general Section 36 bonus policies respecting assisted housing in these areas, it will be necessary to resolve the present difficulties associated with maintaining the two systems. This would not preclude, however, developing area specific policies in the context of a Part II Study which coincidentally resolved the UPH/FSI in an area context, such as I am proposing in the Bay Street Corridor Part II, or in the context of the study of East Downtown currently underway. In my forthcoming report on the UPH/FSI systems for density calculation called for by the 1986 QQR, I will be investigating these issues further and will give consideration to the practicalities of implementing a general Section 36 bonus in the Medium and High Density Mixed-Use districts of the Central Core for assisted hosusing at that time.

In addition, I will be assessing, in response to the Living Room II Report (Recommendation No. 36) the feasibility of extending the existing 25% bonus for social housing under the City of Toronto Act to certain medium and high density Residence Areas. As part of this study, I will examine in general the appropriate use of Section 36 bonuses in these areas within the Central Area. Local or area based Part II studies may also be undertaken within the Central Core which will assess the appropriate use of these two instruments to achieve assisted or social housing.

Establishing an Appropriate Relationship Between Additional Density and Land for Assisted Housing

In the Section 36 guidelines set out in my November 26, 1987 report, I proposed a general criterion with. respect to assisted housing bonuses under Section 36, which would require that the estimated value of the additional bonus density not exceed twice the estimated cost of the assisted housing contribution. In the proposed Financial District bonus this principle was expressed in the form of a formula which related a certain amount of commercial floor area to land for one assisted housing unit. I will be reporting in a separate report, as requested by Land Use Committee, on this bonus and will elaborate in that report on my view that it is important to establish a clear relationship between the amount of extra density granted and the number of units to be provided in exchange. For the purposes of this present discussion, however, the relevant issue is not so much whether a formula is better than a strictly value approach (relating the value of the density to the value of the land provided for housing); but the fact that the value of additional residential density will vary considerably from area to area. To enact general bonus provisions under Section 36 respecting assisted housing, even within areas that share the same Official Plan designations, would require extensive background market

research, involving the services of consultants, if the value principle ennunciated in the guidelines is to be followed, as I believe it should.

Summary

In view of the foregoing discussion, it is my view that the implementation of bonuses which provide for residential density incentives in exchange for land for assisted housing (whether on or off site) should generally proceed on the basis of Part II studies which introduce such provisions on an area basis. In conducting such studies, certain criteria should be considered (in addition to the general guidelines proposed to be included in the Official Plan), as set out below.

i) In developing such bonuses which might apply on a general or area basis, regard should be had for the appropriate use of Council's authority under the City of Toronto Act to set alternative higher densities for social housing producers.

ii) The appropriateness of on-site v.s. off-site land for assisted housing should be considered and the relative impacts of each option fully assessed.

iii) That at least initially, until further experience has been gained, such general or area specific bonuses should generally be limited to the Central Core.

5.2 Heritage Preservation

5.2.1 The Existing Policy Framework - Section 1A.42

Section 1A.42 of the City's Official Plan contains a density bonus policy intended to promote the preservation of buildings of historical and architectural significance in Residence Areas and Mixed Commercial-Residential Areas of the Central Area and the Financial District. (The text of Section 1A.42 is contained in Appendix 2).

Section 1A.42 directs Council to pass by-laws in those areas to permit the exclusion of the gross floor area of a building or structure, or portion of the building or structure, which has been designated as being of historic or architectural significance under The Ontario Heritage Act and retained in the development, from the calculation of the maximum permitted density of development. The gross floor area thus deducted becomes extra, or bonus density, and is referred to as the historic density bonus.

In addition to the requirements that the building or structure must be designated under the Ontario Heritage Act and that a by-law permitting the extra density is to be passed in response to a site-specific application, Section 1A.42 lists five conditions which must be met if the density bonus is to be granted.

The first two conditions require (i) that if a portion of the designated building is retained, the portion must contain the historically and/or architecturally significant features, and (ii) that any new development on the lot respects the character and quality of the designated building, or portion of the building, which is retained.

The third condition limits the gross floor area which can be excluded from density calculations in Residence Areas to 25% of the maximum residential gross floor area permitted on the lot by the Official Plan, and the fourth condition limits the gross floor area which can be excluded in Mixed Commercial-Residential Areas to the following maximum amount, equivalent to 25% of the permissible non-residential gross floor area:

Low and Medium Density Mixed Commercial-Residential Areas	-	.5	x	the area of the lot
High Density Mixed Commercial-Residential Areas	-	1.125	x	the area of the lot
Financial District	-	2	x	the area of the lot

The bonus under Section 1A.42 is to be granted only in response to a site specific rezoning application and accordingly is not to be made available generally as-of-right. However, it should be noted that the bonus is not restricted, or intended to be restricted, to "threatened" buildings, but is available to the owners of designated buildings where the conditions of the Section can be met. Accordingly, the Section states that Council "shall" pass by-laws rather than the customary "may".

The word "shall" was introduced as one of a number of modifications submitted to the Ontario Municipal Board on September 22, 1977. The explanation given for this modification at the time was that it "specifies that Council shall pass by-laws to permit the exclusion of the floor area of the designated building, provided certain listed criteria are satisfied. This removes Cuncil's power to exercise discretion over whether or not it will pass such by-laws in a particular case." This

modification was approved by the Board as part of its approval of the Central Area Plan.

The size of the density bonus available under Section 1A.42 is equivalent to the gross floor area of the designated building or portion of the building which is to be retained, up to a maximum which varies as noted above, with the maximum density permitted on the lot by the Official Plan. The size of the bonus is appropriately tied to the floor area of the designated building since, without a density bonus, the retention of the building would reduce the potential for new development on the site by this amount. Consequently, a developer is not penalized if he or she retains the heritage building or portions of the building which contain the heritage features. On the other hand, a maximum limit for the amount of floor area that could be exempted, which varies by Official Plan district, is also appropriate as a general principle, in order to ensure against over-building around the designated building and to ensure that development on the lot is generally compatible with the surrounding area and buildings.

The Effectiveness of the Bonus

In a forthcoming report on the review of Section 1A.42 of the Plan, mandated by Section 1A.42(c) and called for in the 1986 QQR, I will be assessing in detail the effectiveness of this bonus in achieving its objectives, referring specifically to those occasions when the bonus has been used. The 1A.42 review will also address the following questions respecting the existing bonus:

a) Is there a demonstrable need to increase the basic maximum exemption, as allowed by the Plan, for each or some of the Official Plan designations where it applies?

b) Should the bonus be extended to areas beyond the Central Area?

c) Should it be extended to other O.P. designations within the Central Area (such as the industrial areas)?

These and other questions related to the effectiveness of this current bonus provision are most appropriately addressed in a separate report on the matter. In the context of this present report, however, there is a need to address additional issues which arise in reviewing the experience of recent years with bonuses that have not complied with the provisions of the existing bonus. It is in this respect that the question of the effectiveness of 1A.42 in achieving its stated objective is relevant to the present discussion.

In evaluating the effectiveness of the existing historic bonus policy or any bonus policy, it is important to note at the outset that a bonus is only one of a number of measures available to the City to promote historic preservation, and that it is a tool that may be appropriate in some, but not all instances.

One means of measuring the extent to which heritage buildings have been secured is by the number of heritage easement agreements that have been executed. The fact that the historic density bonus is only one of a number of incentives available to the City to promote the retention of historic buildings is illustrated by the fact that of the approximately 85 or so heritage easement agreements that have been or soon will be entered into by the owners of heritage buildings, only about 36 have involved the use of Section 1A.42.; the remaining 49 heritage easement agreements have been secured through a number of different measures including: density transfers; Official Plan amendments involving changes of use, provisions in Part II plans for changes of use and/or density bonuses; grants; and site specific negotiations involving increased density, that is, an enhanced bonus.

For the purposes of this report the latter category of heritage preservation, site specific negotiations involving increased density (enhanced bonuses beyond Section 1A.42 or for situations not contemplated by 1A.42) is the one which merits further discussion as these could be seen as the basis for an emerging policy framework respecting density incentives for heritage preservation.

I have previously dealt with the use of density transfers to achieve heritage preservation where the effectiveness of the existing bonus is constrained by the particular circumstances of a heritage building on a small site. Noting that in many situations where an historic building occupies an entire lot, and its assembly into a larger development lot is not feasible, the existing bonus is not helpful and unlikely to encourage preservation, my previous report (June 1986) on density transfers proposed that a new transfer policy for heritage buildings on small lots in the Central Core be introduced. The draft by-laws implementing this proposed Official Plan policy will be forthcoming in the near future.

5.2.2 An Emerging Density Bonus Policy Framework for Heritage Preservation

In recent years there have been several applications for Official Plan amendments that have involved density bonuses for heritage preservation that have not complied fully with the provisions of Section 1A.42. Among these have been applications for: 1) density

beyond the limits set out in the Section (e.g. Scotia Plaza and Counsel Trust): 2) substantially rebuilt or replaced heritage floor area (also Counsel Trust and 100 Yonge Street): 3) significant restoration beyond that contemplated by 1A.42 (Toronto Stock Exchange and BCE: Heritage Precinct and Bank of Montreal); 4) public display (use) of a heritage interior (also TSE and BCE); and 5) the re-use of heritage features such as facades (College-Grenville and 74-76 York Street - Nag's Head). It should be noted with respect to this latter category that Council has on occasion also approved the appropriate re-use of heritage features in redevelopments in which no explicit bonus was awarded (e.g. the Wood Gundy facade in Scotia Plaza).

With the exception of the first category (density exemptions beyond the maximum permitted in 1A.42), these categories represent potential new areas for historic bonusing and warrant particular discussion in this regard. I will, of course, be addressing the issue of whether or not the basic historic exemption now in the Plan should be increased as part of my future review of Section 1A.42. However, for the purposes of the present discussion, it is useful to view the existing bonus as a kind of base bonus policy, recognizing that there may be several additional increments that could be considered which would provide a comprehensive system of heritage bonuses.

Conceptually, a multi-facetted policy that conforms to Council's actual practice of approving density incentives in recent years, could comprise four such increment levels: 1) preservation and conservation (the base 1A.42 bonus); 2) significant or exceptional restoration; 3) public display of heritage interior (rent free space to non-profit public use) and 4) the re-use of heritage features. In the following sections I will discuss each of these potential bonus categories and outline the principles upon which they could be based. I am not recommending any new bonuses at this time, but will be reporting further on this matter as part of the future report on Section 1A.42.

Preservation, Conservation and Replication of Interior Floor Area

The existing bonus contained in 1A.42 of the Plan is intended to essentially provide for the preservation and conservation of designated heritage buildings in whole and in situ. In practice this has frequently meant minor restoration, alteration and renovation to ensure that the building is both preserved and will not deteriorate over time. The bonus, which is limited to the floor area of the building or portion thereof that is retained, is intended to compensate the owner for the intial and on-going costs associated with the obligation to maintain the building. As the basic building block of the heritage preservation bonus policy,

this bonus is generally sufficient to be useful in instances where a bonus is considered to be the appropriate preservation instrument. As currently framed, however, the existing bonus cannot always readily achieve these preservation objectives where there is a need to substantially or in some cases totally rebuild the floor area of the building.

As noted above, the existing policy links the size of bonus to the amount of the floor area retained. In many instances, the reasons for designation are related to the building's exterior features only. In some such cases, the interior of the building including its side and rear walls could be substantially altered or completely rebuilt without affecting the reasons for designation and without detracting from the value of the building as part of the urban fabric. While this is not generally a preferred preservation solution, it is in some instances the only practical one, especially where a building occupies most of the lot on which a new development is to occur (the case, for example, of 100 Yonge Street).

In order to provide for adequate foundations, underground parking and building services, preservation of the actual floor area of the heritage building is sometimes a practical impossiblity. This is particularly true in the higher density areas of the Central Core where redevelopment pressure is intense. Cases where Council has allowed for a bonus, on my recommendation and with the concurrence of the Toronto Historical Board, where the floor area was rebuilt included 100 Yonge Street and the Millichamps building.

In my view, consideration should be given to amending the existing policy in order to reflect fully the range of preservation options which may be appropriate. A revised policy could allow City Council, at its discretion, to consider floor area to be retained even though it may be substantially altered or totally rebuilt.

Unlike the present policy, which limits Council's discretionary authority by requiring that Council "shall" pass by-laws to permit the bonus where the conditions have been complied with, the option of allowing for the rebuilding of floor area should be discretionary, to be exercised by Council where Council is satisfied that this is the only practical and feasible solution given particular site constraints. Moreover, replicated floor areas, in order to qualify for the density exemption (to be considered to be retained) should be required to have the same dimensions, scale and volume as the original floor area; should be located such that it has the same relationship to the facade as the original floor area; and should not affect the reasons for designation. As discussed earlier, I will be dealing at length

and in more detail with this specific modification to the existing policy in my further report on Section 1A.42.

Exceptional Restoration

Earlier it was noted that the existing policy was intended to compensate owners of designated heritage buildings for the initial and on-going costs of maintaining (i.e. preserving and conserving) the buildings. In a practical sense, this has in most instances involved modest restoration and upgrading of the heritage building, as part of the normal alterations necessitated by any particular redevelopment project.

This is an appropriate use of the bonus and such minor restoration and improvements necessary to conserve heritage buildings (i.e. bringing the building to the condition where it will not deteriorate) should clearly be expected of the recipient of the bonus. The bonus, however, does not distinguish among heritage buildings or features of heritage buildings in any way. Accordingly, the owner of a heritage building that has many exceptional features (special interiors including murals, for example) that imply exceptional costs to either restore or maintain, is entitled under the existing provisions to no greater compensation than the owner of a building where the reasons for designation are its facade alone. Although grants are available for restoration purposes, in some cases the limits on the size of the grants mean that these could be inadequate in some circumstances.

Neither does the existing bonus distinguish between buildings that require significant restoration and those that have been well maintained over the years and consequently is not in need of extensive restoration. However, in this latter regard it could be argued that this implied inequity is in fact justifiable -- the owner who has maintained his building well over the years is rewarded, whereas the owner who has neglected his building will have to bear a greater burden of the cost of preservation of the building.

A bonus for exceptional restoration, it could conceivably be argued, would appear to offer an incentive to allow a building to deteriorate in order to be eligible for a greater bonus to restore the building. However, if the additional bonus were calculated to cover only the additional restoration costs and no more, than there would be no such incentive. An owner of a heritage building would be no better off if the building required extensive restoration than if it did not. The principle of a cost recovery type of bonus for exceptional costs related to maintenance of special features or significant restoration may be a reasonable

one in those situations where a bonus is an appropriate tool in the first instance, that is, where the existing bonus provisions already apply.

On the other hand, because by its nature, such a bonus would address exceptional site specific circumstances, and because the costs associated with each situation could accordingly vary significantly, it would not be possible to develop a specific formula associated with this kind of bonus. For this reason, a bonus for restoration of designated historic buildings could not reasonably take the form of a schedule, as the present Section 1A.42 does, but would have to set out criteria for site specific consideration. Such criteria could identify those areas where the bonus may be considered appropriate, set out the basis upon which the bonus is calculated (cost recovery, with maximum bonuses in consideration of built form and other impacts, for example), eligibility criteria, and whether the bonus should be commercial or residential density.

I will be reporting further on the potential use of such bonus criteria in the context of the Section 1A.42 report.

Public Display of Heritage Interiors

In two instances in the recent past, City Council has approved, pursuant to Section 36 of the Planning Act, additional density in exchange for the provision of rent free space in significant heritage interiors to non-profit cultural users, in order to ensure public access to the heritage spaces. Both the Old Toronto Stock Exchange Building and the Bank of Montreal in BCE Place were secured in this manner.

The number of buildings in the Central Area with special interior spaces which are not either already secured through heritage easement agreements, or in public use, is actually quite limited. There are a total of ten such buildings in the Central Area, and within the Financial District only three. However limited the applicability of a bonus for the public use of privately held heritage buildings might be, it remains a legitimate category of bonus to consider, where appropriate, and one which Council has sanctioned in recent years.

The bonuses for the public use of both the TSE and the Bank of Montreal in BCE were based on compensating the owners for the cost of providing the heritage space, (and in the case of the Toronto Stock Exchange for providing cash for building related cost of maintaining the space), rent free, to a non-profit cultural user through the provision of extra income producing floor area elsewhere in the development. For reasons similar to those

outlined in the previous section on a restoration bonus, because the costs of providing the space rent free can vary from building to building and area to area, and the value of extra floor area also varies by location and type of floor area, a general formula could not readily be established for such a bonus. As with a restoration bonus, rather than a schedule of bonus allowances, a series of criteria would have to be developed which would identify where this kind of bonus may be appropriate; set out the eligibility criteria (what kind of interior space); and establish the principle of compensating for costs. Eligibility criteria would also have to be set out for future public access to heritage interiors. I will be reporting further on the feasibility of establishing this kind of bonus framework in the Part I Plan in my Review of Section 1A.42.

Use of Heritage Features

A final category of bonus that merits further consideration is the re-use of heritage features where the actual floor area of the building is neither retained nor reconstructed in its former location, with the original dimensions and volume replicated. As noted previously, Council has in some instances provided additional density for this form of preservation, but not others.

The facade of the Wood Gundy building in Scotia Plaza, for example, was dismantled and moved to a new and appropriate location on the redevelopment site, clearly at some cost to the developer. In this instance no explicit bonus was given. Similarly, in my proposed Part II framework for the Bay-Adelaide block, I have not recommended any heritage bonus for the facades that will be moved or otherwise re-used.

On the other hand, in the College/Grenville project involving the Jenkins Gallery and the Lucius O'Brien House, a bonus was considered acceptable. More recently the application for 74-76 York Street, as approved by Council, permits additional density, roughly equal in size to the bonus under 1A.42 but not a bonus which met the criteria of that Section, for the re-use of a portion of the facade of the heritage building, at an appropriate location in the new development. At the time this application was approved, however, the Commissioner of Planning and Development was also requested to report further on bonusing for this type of facade retention.

Discussions with the staff of the Toronto Historical Board are on going over the question of whether or not in the final analysis it is appropriate to bonus for what amounts to the re-use of heritage fragments, even when those fragments or portions of buildings comprise the reasons for designation. The issues relevant to this discussion can best be illustrated in an example such as 74-76

York Street, where the facade is actually to be dismantled and reconstructed elsewhere. No portion of the original floor area is to be maintained and significant portions of the rebuilt facade will comprise new materials. The issues raised are:

a) Is this bona fide heritage preservation or simply good urban design achieved through the careful re-use of heritage features? If it is the latter, than a reasonable case could be made to challenge the use of a density bonus in such instances, since as I have stated previously in my November 26, 1987 report, I do not believe that bonusing for good urban design is an appropriate use of a Section 36 density incentive.

b) If, on the other hand, it is a legitimate form of heritage preservation, in that it provides an appropriate context for the display of heritage features that would otherwise be lost, at, in some instances, considerable cost to a developer, then what kind of incentive, if any, should be offered in exchange?

These same issues would arise in a situation where a facade is retained in situ, but the floor area of the original building is neither retained nor replicated in its original location. Even in the case where a facade may have been identified as the only reason for designation, it could be argued that because it has been disconnected from its historical function and building relationship, facade retention in situ is not heritage preservation but is also a re-use of a heritage feature. It is in any event not heritage building preservation.

The experience of recent years in this area highlight the need to bring greater certainty and consistency to the use of incentives for facade retention or re-use. For obvious reasons the expectation of the development approval process is that similar initiatives in this area would be treated similarly. Just as importantly, it is necessary to look at this issue in the context of a system of bonus incentives that could be made available at appropriate locations. If it is ultimately determined that the re-use of heritage features in new development should be bonused, then it is important that the incentive offered not be so great that an owner would be induced to choose this solution over more preferrable (from the public perspective) solutions involving the retention of entire buildings or portions of buildings.

Conclusion

The appropriate context for further consideration of these matters is the Section 1A.42 review currently underway, as I have noted previously. The use of density incentives for heritage

preservation has proven to be very effective over the past decade. However, we have reached a stage where it would be useful to consolidate and build on the experience of the past ten years and to provide clear direction to the public and the development industry as to Council's intentions and expectations in this regard.

The existing bonus provisions of the Plan are Part I provisions which apply in certain areas of the Central Area. In my view, should the potential heritage bonuses discussed above ultimately be recommended, these should be implemented by way of the Part I Plan, in the same manner as the existing provisions. It may also be appropriate, of course, to provide for similar incentives through a Part II planning study and process. These matters will also be addressed in the Section 1A.42 review.

5.3 Non-Profit Community, Cultural and Institutional Facilities

The existing Official Plan contains a number of policies respecting community services and facilitites and general institutions as well as the arts which are relevant to any discussion of the potential use of bonusing for non-profit community, cultural and institutional facilities. For this reason this section of the report provides a brief overview of those existing policies.

The Plan presently distinguishes between two types of institutional uses: community services and facilities and general institutions, primarily on the basis of the service area of the particular use. Both definitions (See Appendix 3) require that the use be non-profit, and both include educational and cultural uses, but community services and facilities are intended to serve "a local district resident or working population", while a general institution is one "whose service area extends beyond a neighbourhood or district, to include the City of Toronto, the wider Metropolitan area or beyond." Thus, for example, a cultural facility such as an art gallery or a museum could in theory be considered either a community service or facility or a general institution, depending on whether it had a local or regional catchment area. For practical purposes, the Zoning By-law translates this distinction into floor area maxima. Beyond a certain size a use such as an art gallery becomes, under the Zoning By-law, a general institution and would no longer be eligible for any bonus provisions associated with a community service and facility use.

Having made the distinction between these types of facilities, the Official Plan then goes on to establish different locational

policies for these types of uses. Within the Institutional District, general institutions have a high degree of flexibility. Although the Zoning By-law establishes limits of up to eight times coverage in the District, the Plan contains no density limit and rezonings in excess of eight times can be considered by Council, subject only to built form and other impact considerations. Within mixed-use districts, although density limits for institutions exist, considerable flexibility is provided for existing institutions. Block density calculations which allow for density transfers among lands owned by an institution and rezonings up to the mixing formula constant in certain cases where an existing institution is expanding are among the policies which encourage the continued functioning of these important components of the City's economy.

Encouragement is also given to community services and facilities in the form of density exemptions. Section 1A.30 of the Plan contains a general statement that Council will encourage the provision of community services and facilities in the Central Area. Sections 1A.35(a), 1A.35(b), 1A.37(a) and 1A.37(b) relate to density provisions for these uses. Section 1A.35(a) permits additional non-residential density for community services and facilities in mixed-use districts up to specific maxima, provided the additional density is used only for this purpose. Section 1A.35(b) allows for rezonings to permit, in medium and high density mixed-use districts, additional exempted floor area for such uses, subject only to built form, traffic impact, and other criteria. Section 1A.37(a) permits community services and facilities to locate in Residence Areas of the Central Area and limits the gross floor area of such uses to the maximum permitted residential density for the area. Finally, Section 1A.37(b) provides for a further ten percent additional gross floor area for community services and facilities in Residence Areas, a bonus similar to that provided in 1A.35(a).

In addition to the above noted policies that were introduced with the Central Area Plan, a number of provisions that were contained in the 1969 Plan and that were essentially left intact in 1976 with only minor "housekeeping" amendments, continue to apply. These general Arts policies are found in Section 6.10 of the Plan, as follows:

> "To provide for public enjoyment of the arts, Council will encourage:
>
> i) expansion of the St. Lawrence Centre to include suitable and adequate facilities for the performing arts and related functions;

ii) a centre for the visual arts to be established conveniently to the Art Gallery of Ontario and the Ontario College of Art;

iii) provision of accommodation and facilities for such activities as concerts, theatrical performances and exhibitions in public or private buildings located in district commerce centres; and

iv) location of the English speaking network of the Canadian Broadcasting Corporation in the Central Area."

Section 6.3 of the Plan also states:

"It is the objective of Council that within the City there will be space and facilities for education, research and the arts to attract, educate and hold the people needed for a prosperous city commanding a position of international leadership."

5.3.1 Recent Experience with Density Incentives for Community, Cultural and Institutional Facilities

Density Exemption Under Section 1A.35

The existing density exemption provisions for community services and facilities has had limited use over the ten years since its implementation in 1978. Four straightforward applications of the section have been made, including: 62 Wellesley Street West (War Amputees of Canada): The Central YMCA on Grosvenor Street; Toronto Dominion Centre Innuit Art Gallery (TD4 Tower); and 58 Richmond Street East (Metropolitan Toronto Ambulance Station). Each of these is discussed briefly below.

The War Amputees application involved a proposal to build a mixed-use development on lands which were previously occupied by the War Amputees of Canada, and which included new offices and rehabilitative facilities for the association. After approval, and during construction, the War Amputees found that they would not be able to utilize the reserved space for a number of reasons including the rent levels that would be charged by the developer. The developer subsequently made a successful application to the Committee of Adjustment to convert the community service space to commercial use.

In the case of the TD4 Innuit Art Gallery the exemption involved a private corporate art collection to be housed in the new tower. In this instance, in order to ensure the permanence of the gallery, the development agreement for this site contained

provisions respecting public access and further required the owner to lease the space rent free to the City should the gallery cease to operate.

The Central YMCA on Grosvenor Street also made use of the community service and facilities exemption to construct its new facility, as did the Metropolitan Toronto Ambulance service for a station on Richmond Street East. In the latter case a density transfer was also involved, however both applications complied with the provisions respecting community services and facilities.

Finally, it should be pointed out that in two other recent instances the exemption has been applied concurrently with density bonuses for historic buildings to ensure non-profit cultural facilities will be located in significant heritage interiors. In the case of both the Old Toronto Stock Exchange building (awaiting approval by the Minister of Municipal Affairs) and the Bank of Montreal building in the BCE Place, the exemption available under 1A.35 was exercised. Also in both instances, additional density was or is proposed to be granted in relation to the building, however, as discussed previously in Section 5.2.2 of this report, this additional density incentive related to the public use of the heritage interiors and did not represent a cultural or community service and facility bonuses per se. The only cultural incentive took the form of the existing exemption currently permitted by the Plan.

It is difficult to draw conclusions from the fairly limited number of instances where the existing exemption for community services and facilities has been. However, a few general observations are warranted. It would certainly appear by the small number of times the bonus exemption was used, that by itself it is unlikely to encourage the private sector to provide such space in new development. On the other hand, it has been shown to be of some usefulness to agencies redeveloping their own lands for community services purposes and appears to show some potential to generate space for cultural facilities. It should be noted, however, that even in early planning reports on this bonus it was recognized that it would not likely be used extensively. It appears that this prediction has been borne out over the years, and while the exemption continues to have limited application, its use to date has been valid, and it would be appropriate to continue to provide for similar opportunities in the future. Accordingly, I see no reason at this time to consider deleting the exemption from the Official Plan. The issue of whether consideration should be given to enhancing this bonus to actually provide for a market incentive to provide these types of facilities is discussed further in a subsequent section of this report.

Site Specific and Part II Official Plan Amendments Involving Increased Density in Exchange for Community, Cultural and Institutional Facilities

There have been a number of Official Plan amendments which have involved increases in density and in one case a density transfer, where one of the public benefits secured has been the provision of space for community services and facilites, as defined with the Official Plan. The majority of these facilities have been for work place daycare centres. In recent years, City Council has secured the provision of rent free space for work place daycare centres in the following developments: 1) Scotia Plaza/Waterpark Place; 2) Canada Life expansion on University Avenue; 3) Eaton Centre; 4) The CBC Broadcast Centre; 5) The World Trade Centre; and 6) BCE Place. Only in the case of Canada Life, however, was this the only benefit to be achieved as a result of the Official Plan Amendment; in all other instances additional considerations, such as contributions toward the provision of assisted housing, were involved.

Rent free space was also secured for the Canadian Museum for Carpet and Textiles in the mixed-use development at 108 Chestnut Street. This Official Plan Amendment involved a request for increased residential density (increased units per hectare within a previously approved building envelope). In addition, the exemption of the floor area of the museum from the calcualtion of density, consistent with Section 1A.35 of the Plan was permitted. One of the reasons for allowing the increased residential density was because the developer proposed to make this space available in perpetuity rent free to the Canadian Museum for Carpet and Textiles, a non-profit educational institution, or any similar non-profit institution or community service and facility. This arrangement was secured by a Section 36 Agreement.

It should also be noted that a bonus, over and above the exemption permitted under 1A.35, was granted in respect of additional new floor area for community services uses adjacent to the historic Bank of Montreal building, on the concourse level of the BCE Place development. This bonus was calculated to compensate the developer for the cost of providing the additional space rent free for a non-profit use. However, the intent of the additional floor area, and consequently the bonus associated with it, was to ensure that the Bank of Montreal building and its special heritage interior could be made viable for a community service or cultural use. In this sense the bonus related principally to ensuring a viable public use of the Bank building in order to appropriately display its heritage interior.

One final site specific application for an amendment to the Official Plan to permit increased density for a cultural facility involved the CBC English language headquarters. In this instance, City Council permitted an additional 3.0 times coverage non-residential density, beyond that ordinarily permitted in order to facilitate the consolidation of the CBC's operations, currently scattered across the Central Area, to its Front Street West site.

While the Official Plan did not contemplate this kind of density bonus for an existing institution relocating to a new site in the Central Area, the principles upon which the increased density were based were similar to those which would apply in mixed-use districts to such an institution expanding on lands it had held for such purposes. More importantly, Section 6.10, which contains the very few references in the Official Plan to specific cultural facilities or objectives to be met, includes a provision that Council will encourage the "location of the English speaking network of the Canadian Broadcasting Corporation in the Central Area."

Conclusions Respecting the City Experience with Site Specific Official Plan Amendments

At the risk of over-generalizing from a relatively small number of instances where City Council has permitted increased density (beyond any exemptions already permitted by the Plan) to facilitate the provision of community, cultural or institutional uses, I believe some reasonable conclusions can be drawn from our recent experience. First, an overwhelming number of cases have involved the provision of work place daycare centres in new developments. Of these, five were in major developments within High Density Mixed Commercial-Residential Areas, and two have been in the Financial District. Of the remaining cases, one will result in the achievement of a long-articulated objective of the Official Plan, viz: to find a new headquarters for the CBC. The other case, that of the Canadian Museum of Carpet and Textiles, did not enjoy this same kind of official sanction, but it was felt at the time to be a reasonable benefit in the context of the application for increased residential density and the particular circumstances involving the resolution of problems with the UPH/FSI systems.

5.3.2 Bonusing for Community, Cultural and Institutional Facilities: Issues and Directions

I have indicated earlier in this report that although the existing density exemption for community services and facilites has had limited application, it has been useful in a few instances, and in general I see no compelling reason to disallow its continued

availability for community service users. On the other hand, the question of whether this exemption should be extended and made a more pro-active bonus by offering income producing floor area to private developers in exchange for rent free space for various community, cultural and institutional users raises many serious questions and issues.

At a very basic level, of course, it may be appropriate to consider bonusing where Council has identified the need to actually promote a particular service or facility. However, this begs the crucial question: how is it to be determined which service or facility is to be promoted in this way, and where is it to be promoted? To simply provide for density incentives for the general and undifferentiated category of community, cultural and institutional facility, could easily generate facilities of dubious value and/or result in over representation of certain desirable (from the developer's point of view) facilities (i.e. art galleries as opposed to hostels).

It would be inappropriate to leave the determination of public objectives to the private development process. What is therefore at issue is the establishment of an appropriate process for identifying objectives and assessing needs for an extensive range of facilities and services. In my view this task could be made more understandable, manageable and practical if this range of potential services and facilities were divided into three district categories: 1) facilities which provide services to people at their place of residence; 2) facilities which provide services to people at their place of work; and 3) cultural facilities.

Services to People at their Place of Residence

When one thinks of community services, what generally first comes to mind are services which fall into this category, that is, residential support services normally delivered on a local or district level: schools, community centres, outreach and counselling services, services to the elderly, daycare centres, drop-in centres, community health and mental health centres; etc. The particular constellation of services that should be provided to a specific population will of course vary by neighbourhood, and depend upon a host of demographic and socio-economic factors. For this reason it is not appropriate to consider developing a list of needed facilities by, for example, Official Plan designation such as Residence Areas. Rather, needs assessments should be undertaken on a local area or district basis in consultation with those community-based organizations which have contact with the residents on a daily basis. This kind of assessment is frequently done by many major service providers or funding agencies, such as the United Way.

Needs assessment and identification of service gaps, however is merely the first step in the process of establishing objectives. Once the needs have been identified, an assessment of the most appropriate means of filling those needs must also be conducted. This is critical in terms of the current discussion because in many instances what is needed is not a physical space, which a bonus policy could conceivably deliver, but on-going core funding, which it should not. There are also many different ways in which the City could contribute directly to the provision of space, should it be needed, and consideration of any local bonus options would have to to be cognizant of such potential (e.g. the use of space in community centres and other City-owned land or buildings). Finally, a crucial question which must be addressed is the City's role and responsibility in the delivery of these services vis-a-vis other levels of government.

In my view, it would be entirely premature to consider any general or area specific bonuses for neighbourhood oriented community services and facilities in the absence of the kind of assessment that I have briefly described above. If such a study were undertaken on a local basis, then a possible outcome could be consideration of limited bonus provisions to achieve specific, identified objectives for which a bonus was determined to be the most appropriate means of implementation. Under such circumstances, of course, once the identified facilites were actually achieved, the bonus provisions should cease to apply or be repealed.

Services to People at Their Place of Work

The range of potential services which fit this category are far more limited than for residential areas. Many of the services that are required by working people, i.e. financial services, employment or career counselling, health clubs, etc. are not considered to be social services per se, but are none the less important amenities. On the other hand, these are also services which the private market has had no difficulty in delivering at levels generally adequate to meet the needs of our major employment centres. Moreover, these amenities are also ones which would not normally meet the non-profit requirement of the community service definition.

One major exception to this general condition, however, is work place daycare. As I noted earlier, a critical shortage in daycare generally has in recent years caused Council to seek to secure work place daycare in a number of development projects on the Central Core. The need for the level of support that has been required of private developers (rent free, fully equipped space) is undisputed. No non-profit daycare could afford to pay the kind

of rent that prime office space commands in the Central Core; in fact non-profit daycare centres normally must operate out of low rent or rent-free space no matter where they are located. In areas outside the Central Core, however, daycare centres can find such space in schools, churches and municipally-owned buildings. In areas such as the Financial District or the High Density Mixed Commercial-Residential Areas of the Central Core, these kinds of opportunities are virtually non-existent.

For these reasons, and to consolidate the experience that has been gained in this area in recent years, I will be proposing in a separate report in the near future a bonus for work place daycare in the Financial District. In recognition of the fact that five of the seven daycare centres that have been achieved in this manner have been in projects located in High Density Mixed Commercial-Residential Areas, I will also be evaluating the appropriateness of a work place daycare centre bonus in these areas.

With the exception of work place daycare, I do not believe that consideration should be given to bonuses for other community services and facilities in either the Financial District or other major employment centres except where a general or area specific study has been conducted which: 1) demonstrates the need for a particular service or facilty and confirms that it is of highest priority; 2) establishes that the appropriate level of support for the facility is the provision of a physical space and 3) assesses the cumulative effect of any such bonus and finds this impact to be acceptable.

Cultural Facilities

For the purpose of this analysis, I have drawn a clear distinction between cultural facilities and other categories of community services and facilities, and I have done so for several reasons. As noted previously, at present in the Official Plan certain cultural facilities, such as small art galleries and museums, could be considered as either community services and facilities or general institutions, depending on their catchment area. A local or district base would be grounds for classification as a community service or facility; a City-wide or regional draw would mean the use should be considered a general institution. In practice, it is doubtful whether this original distinction has ever been particularly meaningful. For the most part, public art galleries and museums, large or small, have a broader than local draw. While size will no doubt affect the impact such a use could have on its surroundings, in terms of parking and traffic for example, size alone is unlikely to yield any distinction with respect to the nature of the catchment area.

More importantly, this current confusion (is a public art gallery or museum a community service or facility, or a general institution?) has caused a significant policy vacuum to exist within the Plan respecting the arts and cultural institutions generally. This has a number of implications for new and/or growing smaller cultural facilities, such as the Design Exchange or, for example, some of the smaller non-profit theatres. The institutional policies of the Plan, which were greatly influenced by the needs of the larger institutions, such as the Universities and Hospitals, provides flexibility for existing institutions, and institutions with extensive land holdings. The community services and facilities exemption, on the other hand, would not apply to many new cultural facilities with non-local characteristics. In large part, the Plan cannot serve these cultural facilities well because they are poorly defined in the Plan. Without an explicit policy focus these facilities fall between the cracks. There is consequently a real need to clearly articulate in the Official Plan policies respecting cultural facilities. In the absence of any such cogent and focussed policy framework, discussions of appropriate implementation strategies (among which bonusing is only one possibility) are premature.

Developing a comprehensive arts and cultural facilities policy will be a major undertaking, but in my view one which must be undertaken before any general bonus provisions respecting these uses could be considered, although, as discussed further below, this would not preclude introducing area specific policies through Part II plans, where such a comprehensive, but area based, framework had been developed.

Continuing to consider site specific proposals for cultural facilities, as was the case with the Canadian Museum for Carpet and Textiles, has a number of serious drawbacks. First, it essentially defers to the private sector to determine City Council's priorities for such facilities. While the market place may be an efficient mechanism for achieving certain objectives, it has not demonstrated any particular efficiencies with respect to the rational allocation of cultural resources. Second, responding to opportunities as presented by the development community will not necessarily yield the most appropriate location for any particular cultural use. Third, the site specific process, since it is fundamentally driven by the nature of the proposal and hence the proponent, does nothing to ensure that those institutions or facilities most in need of support will be served.

It should also be noted that site specific bonuses for cultural facilities, in the absence of a framework, can also generate concern among both the development industry and the arts and cultural community. On the one hand, developers could come to

expect that if a museum for example is bonused in one instance, it will be acceptable in another. The cutural community, on the other hand, could also begin to have expectations of the development approvals process which would either foster competition among various cultural groups for the interest of developers and/or engender dissention among those who were not successful in acquiring a facility in this manner.

The determination of Council's policies and priorities respecting the arts and cultural facilities should not be left by default to the development approvals process. An appropriate consultative process should be established involving the arts community generally, along with other interested groups, to determine what kinds of facilities and services are needed and will be needed in the future.

It is equally important to gain an appreciation, especially for the purposes of this discussion of bonusing, of what level or type of support is needed by various cultural facilities; i.e. which activities require funding; which land; which land and building, which all three. Bonusing under Section 36, as I have discussed earlier, is capable of providing physical spaces - land, buildings or portions of buildings, or, in some instances, cash contributions toward physical spaces. The use of bonuses to provide on-going core funding or subsidize operating expenses is not appropriate. Accordingly, once Council has determined its objectives and priorities respecting needed cultural facilities, it will be necessary to determine which, if any, could most effectively be achieved through a bonus policy. The impact of the use of bonuses to achieve these objectives would also have to be undertaken, as well as an assessment of alternate mechanisms (promotion by the Toronto Economic Development Corporation; grants; or other funding options, for example). Until this kind of analysis has been completed, I would be reluctant to consider the use of Section 36 for securing cultural facilities.

All of these questions, and others, should be addressed through a comprehensive arts and cultural facilities policy ultimately to be enshrined in the Official Plan. In some respects, many of these questions were raised in the 1985 document: "Cultural Capital: The Care and Feeding of Toronto's Artistic Assets", and while this important study, commissioned by the Toronto Arts Council, stimulated debate and focussed interest on the general topic, consensus was not reached on whether it represented an appropriate or comprehensive basis for developing a policy framework. The task that was initiated by the publication of "Cultural Capital" remains to be completed, and until it has, and a policy framework established in the Plan, the use of Section 36 bonuses on a site specific basis to secure cultural facilities could ultimately do a

great disservice to the arts and cultural community while causing great uncertainty in the development approvals process.

The Theatre Block - A Part II Approach

I have expressed serious reservations about the use of Section 36 to secure cultural facilities on a site specific basis in the absence of clearly articulated goals contained in a comprehensive Part I policy framework. However, in my view, it may in limited circumstances be legitimate to consider the use of Section 36 through a Part II study process where an area based framework has been established for achieving particular, identified objectives.

In my July 15, 1987 report entitled "Revitalization Concept for the Theatre Block", I described the key elements of a strategy to effect the revitalization of this important area of the downtown. The concept not only envisioned the physical revitalization of the block, which contains a number of public and private heritage structures, but also called for the re-establishment of a major cultural focus to the block by encouraging integrated development and the location of uses and facilities which would foster a cultural synergism. In the near future I will be reporting on a Part II Plan for the Theatre Block that will make more specific the actual program of improvements, acquisitions, and uses that should be implemented to achieve the complete revitalization of the Theatre Block. As part of this planning study, the appropriate use of Section 36 will be considered, in the context of both the specific objectives to be met and an assessment of the range of planning and other tools at the City's disposal. In essence, what will have been conducted on an area basis is the kind of comprehensive planning exercise that I have recommended be undertaken at a City-wide policy level. As a result, the concerns that I have expressed over cultural bonusing on a site specific basis would not obtain in this instance.

I would also note, however, that the Theatre Block is a unique area and it is unlikely that a similar area-based opportunity of its nature would arise again. The large number of performing arts theatres, significant historic buildings and extensive public ownership on the block are factors which together occasioned an intensive examination of the block as a focus of cultural activities. For these reasons, I believe it would be unlikely that other appropriate areas would be identified and therefore feel it generally undesirable to consider the use of Section 36 for cultural facilities through the Part II process until such time as a Part I framework has been established.

It should also be noted that the Part I Plan identifies, in Section 6.10 quoted earlier, the expansion of the St. Lawrence

Centre and a centre for the visual arts near the Art Gallery of Ontario and the Ontario College of Art. As explicit objectives of the Plan, a special study could consider the appropriate means for securing their achievement, which might include the use of Section 36, as was the case with the CBC Broadcast Centre, also noted in Section 6.10. However, since these objectives have not been re-assessed since 1969, when first introduced, the special study would need to assess the continued validity of each of these objectives.

Clarification of goals and objectives of the Part I Plan respecting arts and cultural facilities and a framework that establishes an appropriate process for identifying needs are, in my view, prerequisites to consideration of the broader use of a bonusing instrument for these facilities.

5.4 Parks and Public Open Space

In the proposed Section 36 guidelines set out in my November 26, 1987 report the provision of public open space was identified as facility, service or matter for which density incentives might be considered. These kinds of amenities were included on the list principally for three reasons. First, the City has received or will receive such benefits through Section 36 in connection with two developments: the CBC Broadcast Centre and 70-92 King Street East and 10 Court Street (King Deck). In both instances the objective of acquiring a park had been identified prior to the application for increased density. It should also be noted that parks have been secured through the development approval process, over the years, where no increase in density was provided, for example College Park and Asquith Green, as well as in developments which did involve increased density, such as Trinity Square in the Eaton's Centre. Second, the acquisition of open space or parkland through the development approval process has been long recognized as a legitimate municipal goal. Under Sections 41 and 50 of the Planning Act, municipalities may require the provision of parkland, or a cash payment in lieu, as a condition of approval of development or subdivision. Finally, the acquisition of parkland would also comply with the general guideline for bonusing that the benefit be either land, building or a physical space.

Conceptually, the notion of bonusing for public parkland is a sound one, and bonuses for parks and open space have been among the more prevalent bonuses given in many U.S. cities where bonus programs have been implemented. There have been a number of disadvantages associated with bonuses for parks in other muncipalities, however, that should be considered in this present discussion. In addition, I have some concerns about the extent to which bonuses should be used to encourage the provision of parks

when the City has the authority, under Section 41 of the Planning Act, to require parkland. The remaining subsections of this section will address these considerations.

5.4.1 Problems Associated with Bonusing for Parkland

As I have noted, a number of U.S. municipalities have used density incentives to achieve open spaces, including New York City and Seattle. In Canada, Vancouver, through its Amenity Bonus Program, and Calgary have provided incentives for the provision of plazas and open space. In assessing the effectiveness of some of these programs or at the time consideration was being given to their implementation, planners involved identified a number of potential problems where bonuses were offered for park and open space. A bonus system for parks and open space would have to safeguard against such problems and against getting parks that are:

1) located in areas where they are not needed;

2) too small to be effective;

3) poorly located on a site; and/or

4) are poorly designed for public use.

One of the principle reasons these kinds of problems have arisen in the park bonus programs in the U.S. relates to the legal framework for planning in some states which requires that all bonuses be available essentially as-of-right, with little discretionary power conferred upon planning commissions. As a result, open spaces of dubious public value have been generated by such bonus programs.

In Ontario, the planning authority is different, and municipalities can implement density incentives through the Official Plan and still retain a great deal over control of the actual details through a rezoning on a site by site basis. Consequently, it may be possible to establish criteria that will ensure that park open space will be provided where it is truly needed and where it will be effective in addressing park needs and deficiencies.

To properly address this issue, it is essential that the Plan clearly identify those areas or locations where park deficiencies exist and establish priorities for park acquisition. In the absence of this kind of framework, there would be no guarantee that any density bonus offered for park space would actually yield a needed social benefit. At the same time, expectations among

members of the development industry could be needlessly and unrealistically raised.

Currently, Map 7 of the Official Plan sets out the kind of general framework for the Central Core that is a prerequisite to bonusing for parks. Unfortunately, the map has not been updated for some ten years, during which time park acquisition has occurred in the Central Core (College Park, Trinity Park, Asquith Green, the CBC Park, Thompson Hall Park, Court Square and the McGill Granby parkettes, for example). One of the major tasks of the Open Space Review, called for by the 1986 Quinquennial Review, will be to reassess parks needs in the Central Core and Central Area, set out the elements of an appropriate park system for these areas, and establish goals and objectives with respect to, among other things, park acquisition. A revised Map 7 is therefore likely to result from the Open Space Review, which will be undertaken in consultation with the Commissioner of Parks and Recreation.

While the Open Space Review is now underway, it may be some time before proposals for a revised Map 7 or a new framework will be available. Until that time, however, it may be appropriate to consider the existing Map 7 as a basis for identifying park deficiencies, with respect to those areas in the Central Core where no park acquisitions have occurred in the last ten years.

In addition to clearly identifying those areas where park acquisition is appropriate, there is a need to establish criteria respecting the type of park that could be considered for bonusing. Such criteria would provide greater clarity to the development industry respecting the necessary characteristics of a park for which a bonus could be offered. The Open Space Review will address these issues in detail and make specific recommendations respecting these matters. In the interim, however, the following criteria should be used to assess whether the use of Section 36 to secure parks is appropriate. These criteria should establish that the proposed park:

i) comprises land in excess of the amount which could be required under Section 41 of the Planning Act;

ii) comprises land which in the context of redevelopment could not otherwise be secured through street or land closings or other land exchanges involving City owned lands;

iii) is of an appropriate size in relation to the type of need; and

iv) provides acceptable sun and wind conditions, taking into account the overall environment in the area in which the proposed park is to be located.

A final consideration around the issue of bonusing for park space is the determination of the size of the bonus. In this regard a number of factors are important, First, under Section 5.31 of the Plan, where a developer proposes to convey to the City land for a park in excess of 1/3 acre, the development rights vested in those lands are not lost, but are associated with the parcel of land retained by the developer and subsequent owners in perpetuity. The "cost" of the land, therefore is the value of land at that location which has no development rights.

At the same time, the presence of public park on a development site can greatly enhance the development itself, and this, too, must be taken into account in establishing the relationship between the value of the bonus and the cost of benefit. For these reasons, any bonus for parkland is likely to be relatively small in comparison to other types of benefits. There may be other, site specific costs to the developer, in the form of a less efficient floor plate, for example, that result from accommodating a park in the site plan that will also factor into the determination of cost. In a large development, for example, the provision of a park might not engender any building inefficiencies or otherwise compromise a development, whereas on a small site a park of the same size could. Because of the site specific nature of these considerations, criteria for determining value and cost will generally have to be examined on a site by site basis. The general criteria proposed in the Section 36 guidelines should provide sufficient guidance in this matter.

As noted previously, at present the Official Plan contains a map showing park deficiencies, Map 7, only for the Central Core. I have noted that identification of park deficient areas is an essential prerequisite to authorizing increases in density in exchange for the provision of a Park. Accordingly, it may be possible to consider this matter through a Part II study for a particular area. Such a process could identify particular deficiencies within an area and, should the bonus be considered a viable instrument in that context, the Part II could promote the provision of the needed space through density incentives.

5.4.2 Bonusing (Section 36) vs. a Park Levy (Section 41)

In my November 26, 1987 report I indicated that if a bonus for parks or public open space were to be considered, it should only be for space beyond that which might otherwise be required pursuant to the Planning Act. In a letter dated January 22, 1988

(see Appendix 5), the Commissioner of Parks and Recreation raised some concerns with respect to this qualification. The Commissioner notes that at present the City does not regularly use Section 41 of the Act to require parks dedication or cash-in-lieu of parks, and is therefore concerned that the proposed wording would prevent the City from securing parks through rezoning if City Council did not, at the same time, pass a site specific by-law imposing Section 41 of the Act. Any bonus would then be calculated on the basis of parkland provided in excess of the Section 41 requirements.

As discussed earlier in Section 4.1 of this report, an important principle that should guide the use of Section 36 is that bonusing should not be used to secure benefits which could be otherwise legitimately required by City Council through existing legislation or through its Official Plan. It would be inappropriate to bonus for park space where Council has the authority under Section 41 to require it. If additional parkland beyond that which may be acquired under Section 41 is needed then the use of Section 36 could be considered. Section 36 should not substitute for the authority under Section 41, but could be used to augment those regulatory powers to increase parkland. In reaching this conclusion, staff of the Ministry of Municipal Affairs were consulted. Ministry staff also indicated concern over the use of density incentives to secure a benefit where the Planning Act or any other legislation confers upon a municipality the authority to require that contribution.

However, the guidelines should be modified to make it clear that Council may bonus for parkland under Section 36 for an amount of land in excess of that which may be required under Section 41 (2 or 5 percent depending on the land use). This would not necessarily require that Council use Section 41; it would merely make the first 2 or 5 percent of parkland ineligible for a bonus, whether Council has exercised Section 41 or not. In practice, in the event City Council chooses not to impose Section 41, this guideline would have the effect of requiring a developer to provide 2 or 5 percent of a development lot "free" to the City in order to gain access to any bonus density for additional parkland. Thus, the first 2 or 5 percent would effectively be a base requirement not unlike the matters discussed previously, such as public art, environmental agreements, and infrastructure improvements, etc., which are to be required to be provided when an increase in density is authorized under Section 36, but for which no calculable bonus is to be given.

While I consider it appropriate to bonus only for parkland in excess of that which can be required under Section 41, I also believe it is important to pursue the comprehensive implementation

of Section 41 as quickly as possible. As I have noted in a number of recent site specific rezoning applications where the Commissioner of Parks and Recreation has recommended the implementation of Section 41, I will be reporting in the near future, in consultation with the Commissioner, on the use of Section 41 of the Act. I will endeavour to expedite this report to ensure the most effective and comprehensive use of this instrument for achieving park objectives of the Plan.

The Commissioner also noted that I had recommended in the Section 36 guidelines that 'public open space' be acknowledged as a benefit for which a bonus may be considered appropriate, rather than 'park space'. The Commissioner is concerned that 1) only park space, conveyed to the City, should be eligible and 2) that, if public open space is deemed to be worthy of a bonus, then it should be clear that the bonus should only be for space in excess of the current requirements in the Official Plan and Zoning By-law for common outdoor space.

I have no difficulty accepting the latter point because it would be completely consistent with the principle previously set out respecting Section 41 of the Act. The current requirements to provide common outdoor space in mixed-use districts of the Central Core in order to enhance pedestrian amenities in that area have been in place for over ten years and have been quite effective. I do not believe it would be appropriate to allow this requirement to be bonused now or at a future date. A minimum level of common outdoor space is an appropriate requirement of <u>any</u> downtown development, whether it involves increased density or not, and has been firmly established as an acceptable and desirable requirement under ordinary circumstances of development approval. The modification to the guidelines previously discussed in Section 4.1 of this report clarify that no bonuses should be made available where Council can otherwise require any facility, service or matter, and therefore responds to the concerns of the Commissioner of Parks and Recreation.

With respect to the proposal of the Commissioner of Parks and Recreation that only public parks (lands conveyed to the City) be eligible for bonusing, I also concur that this would be an appropriate limitation of the use of Section 36 at this time and propose to modify the guidelines accordingly.

5.4.3 Conclusions Respecting Bonusing for Parks and Open Space

In order to deal responsibly with the matter of bonusing for the provision of parks, to ensure that there is certainty and equity in the development approval process, and to safeguard against the proliferation of parks of dubious public value, it is essential

that additional criteria be added to the proposed Section 36 guidelines that establish the conditions under which such bonuses may be considered. The Open Space Review called for by the 1986 QQR will address these matters and make appropriate recommendations to amend the Official Plan respecting park acquisition in general and the use of Section 36 in particular. Until such time as the Open Space Review is complete, Map 7 of the Plan, which sets out deficiencies in the Central Core, taking into account any acquisitions that have occurred in the past ten years and the criteria set out above, should form the basis of identifying parks which could be acquired through the use of Section 36. Alternatively, Part II studies which have identified particular area deficiencies and which addressed the most appropriate means by which to redress these deficiencies, could be an acceptable process by which to introduce Section 36 bonuses for parks.

5.5 Significant Pedestrian Connections

It is an objective of the Official Plan to encourage the provision of pedestrian walkways which provide access to public transit. Although Council has from time to time in particular instances contributed to the cost of such connections, it has been bonused for the provision of a significant connection of this nature on only a single occasion, namely in the BCE Place Part II. Normally it is expected, for a number of reasons, that a developer should pay for underground connections, generally sharing the cost between owners at either end of the connection. Where the City has contributed to the cost in some way, it has occurred because of particular circumstances where a connection was critical to providing a unified pedestrian system.

Similarly, in the case of BCE Place a contribution from the City was considered appropriate because: 1) the tunnel connection to Union Station and the subway would provide an important and necessary alternative and help relieve congestion at this point, and 2) the City was the owner of the lands on which Union Station is built. The Union Station tunnel connection was viewed as a critical link not merely because of current problems of congestion, but because it is recognized that, as the heart of the GO transit service to the Core, Union Station will play an increasingly important role in future transit ridership. Accordingly, the BCE Part II permitted a bonus that would compensate the developer, in the form of additional income producing floor area, for approximately half the projected total costs of the tunnel.

The case of BCE is instructive, but it also raises the question of how to determine which connections are to be bonused and which are not. The guidelines suggested in my November 26th report

indicated that the connections that may be appropriate to be bonused are those which accord with major public objectives. For the purposes of the present discussion, the important questions are:

1. how are those major public objectives to be determined; and

2. when they have been identified, what criteria should apply to determine if bonuses are the appropriate policy instrument.

5.5.1 Identifying Major Public Objectives Respecting Pedestrian Connections

The City's experience with contributing toward the costs of providing particular underground pedestrian connections could be a useful guide to develping criteria for identifying those connections for which a bonus may be appropriate. However, I do not believe accumulated experience alone would be sufficient to guide Council on this matter. It is essential that those connections which are intended to accomplish major public objectives be articulated in the Official Plan in the form of a general framework. The exact locations of all such connections need not be set out, but general locations should be, with the principles for selecting the significant linkages clearly set out. I believe this kind of clear direction is essential both in terms of the expectations of the development industry and in order to provide some certainty to the public in the development approval process. With either the locations of those connections which will achieve major public objectives set out in the Plan, or detailed criteria for determining such connections articulated, or both, a proper framework for the use of Section 36 for this purpose would be established. Accordingly, I am recommending that a further study of significant underground connections be undertaken with a view to establishing such a framework. This would not preclude, however, the subsequent identification of specific major connections through an appropriate Part II study, once general criteria had been set out in the Part I Plan.

5.5.2 When is Bonusing the Appropriate Policy Instrument

Once a framework has been established to identify those significant pedestrian connections which achieve major public objectives, a further question respecting the determination of whether to use density incentives to promote the provision of these linkages arises. Depending on the location of any specific connection, it may be that a bonus would not be an appropriate means to achieve the connection. Built form considerations, traffic impacts, overshadowing or other concerns may suggest that increases in density and/or height may not be acceptable or

justifiable. In such cases, it may be that the City's past practice of contributing directly to the construction of these walkways would be more appropriate than a bonus.

It may also be that some of the major pedestrian linkages are not, in fact, underground, but at street level. In such cases, the identification of the walkway in the Plan would alert the development industry to Council's objective, and through the development review process and the use of the existing exemption in mixed commercial-residential areas for walkways in private development, the provision of the needed walkway could be secured. In cases such as these, there would be no need for a density incentive (as opposed to an exemption) to promote the objective.

This issue of when to use a bonus is one which could be addressed at the time a Part I framework is established, especially if the number of such connections is relatively small, which I expect it would be. Alternatively, once a Part I framework were in place, it could be left to Part II or area studies to determine, in the context of other local objectives, the appropriateness of a bonus for significant pedestrian connections.

5.5.3 Conclusions Respecting Significant Pedestrian Connections

The use of density bonuses to secure pedestrian connections should be approached with some caution. Council has achieved many such connections over the past few years, both above and below grade, with only limited direct contribution to their cost. The existing exemption for at-grade walkways, and the fact that underground walkways greatly enhance any development which they link into the system, have meant that in general no such incentives are needed to encourage the provision of walkways. Accordingly, as a first step before considering further bonuses of this nature, criteria should be established in the Part I Plan that would provide guidance as to what kinds of pedestrian connections could be considered to be meeting major public objectives. Once such criteria have been established, either through a Part I amendment or a Part II study, the general location of those connections that are considered to meet the criteria could be set out. Finally, the Part I, or alternatively a Part II, should establish where a bonus may be the appropriate planning instrument to achieve the identified objective, having regard for the other principles set out in the proposed Section 36 guidelines.

5.6 "Other" Public Benefits

The final category of public benefit for which a bonus under Section 36 could be considered, as set out in my November 26th report, comprises: "other facilities, services, and matters which

may not otherwise be required pursuant to the Planning Act, and which are considered to be advisable by Council following its consideration of the appropriate planning study". I included this last category in the proposed criteria principally in recognition of the impossibility of predicting in advance all the possible public benefits for which Council may wish to offer density incentives. A finite list of potential public benefits could restrict Council's flexibility to respond to changing needs and priorities, and particular site specific opportunities which may arise from time to time. While I believe the other five categories of benefits represent a fairly exhaustive list of facilities, services or matters which could be received in exchange for density and/or height incentives, it is conceivable that one-of-a-kind benefits or other categories of benefits that could be appropriate have not been anticipated. For these reasons, I recommend that this last category of "other facilities, services and matters" remain in the Section 36 guidelines.

It should be recognized that in providing for the possibility of other types of benefits for which bonuses might be considered, there is a certain risk that the development industry or the public might misinterpret the degree of flexibility intended. I have reiterated on a number of occasions in this report the need for the guidelines to promote shared expectations of the development approvals process among the public, planners, politicians and the development industry. To the extent that the existence of the 'other' category militates against this certainty and predictability respecting Council's intentions, there may be some risk attached to this proposal. However, under the proposed guidelines, the introduction of any new bonuses including those under 'other' benefits would itself involve an Official Plan amendment and would therefore be subject to extensive public scrutiny as part of that process. Moreover, even if the 'other' category were not identified explicitly, it would still be possible for Council, at its own initiative or at the initiative of a land owner, to consider other benefits by way of an Official Plan amendment, although in this latter case an amendment to the Section 36 guideline section of the Plan (should it be adopted) could also then be required.

On balance, I believe it would be preferrable to acknowledge at the outset that there is the possibility that other benefits may ultimately be deemed to be appropriate for bonusing provided the guidelines themselves afford sufficient clarity and direction. As it presently reads, the proposed guideline does not provide this clarity and I am therefore recommending additional statements concerning the factors to be addressed in the planning study which might introduce a new category of bonus either on a site specific,

Part I or Part II basis. The planning study should, among other things:

a) explicitly identify the specific Official Plan policy objective or objectives that would be promoted by any incentive;

b) consider whether the benefit and incentive is one that could or should be generally available or limited only to a particular area or site because of particular local or site specific circumstances; and

c) identify if the benefit is one which could be more generally applied (e.g. it is not a one of a kind benefit), and if so, then address the question of precedent and the potential cumulative effects of bonusing for the benefit.

6. REVISED SECTION 36 GUIDELINES

Throughout this report I have noted a number of modifications to the proposed guidelines set out in my November 26, 1987 report. In my opinion these changes would help to provide greater clarity about the use of density and/or height incentives. The proposed modifications are summarized below. The full text of the revised Section 36 guidelines are contained in Appendix 6.

1. The guidelines have been modified to make it clear that increases authorized under Section 36 should be for benefits beyond those which may otherwise be required to be provided by the Planning Act, or can be required by City Council.

2. Further criteria have been added respecting the establishment of maximum bonus allowances and especially where more than one bonus is either proposed or where existing bonus provisions of the Plan would apply.

3. Reference to the need to consider the appropriate use of the bonus provisions under the City of Toronto Act for social housing prior to implementing bonus provisions under Section 36 for assisted housing has been added.

4. The revised guidelines clarify that non-building related on-going operating and program costs are not acceptable facilities, services or matters for which bonuses could be considered.

5. Additional interim criteria respecting the use of density incentives to secure the provision of public park have been added.

6. The guidelines have clarified that there are certain facilities and matters, such as public art (1% for art), environmental agreements, waste recycling programs, etc., which will be required to be provided where an increase in density is to be authorized under Section 36, but for which no specific bonus density is to be calculated or authorized.

7. PROGRAM OF FURTHER STUDY

I have referred to a number of studies to be undertaken prior to the implementation of certain bonus provisions under Section 36 of the Planning Act. Some of these studies had been requested earlier and originated from other sources, such as Living Room II and the 1986 Quinquennial Review. Others were identified in this report as a result of the subject request to consider in detail the process for implementing Section 36 bonus provisions. For convenience I have summarized the proposed program of study below.

a) The UPH/FSI review, called for by the QQR, will consider the inclusion of new assisted housing provisions permitting increased market residential density in exchange for the provision of land for assisted housing, taking into account the considerations outlined in Section 5.1 of this report and the framework established by the guidelines in Appendix 6. Several Part II studies, for Bay Street in North Downtown and for the East Downtown have or will also consider these matters on a local area basis.

b) Living Room II called for a report on extending the 25% assisted housing bonus under the City of Toronto Act to certain higher density Residence Areas. As part of the study of this issue, I will also assess as an alternative, the use of Section 36 incentives to promote the participation of the private sector in the provision of assisted housing. Where appropriate in the Central Core, I will also consider these issues on the basis of local Part II studies in medium and high density Residence Areas.

c) Before considering any site specific proposals, other than for those facilities identified in Section 6.10 of the Plan, for increased density in exchange for the provision of cultural facilities, an Arts and Cultural Facilities policy should be developed, for inclusion in the Official Plan. A Part I framework could provide the basis for further consideration of this issue. One exception to this would be the Theatre Block Part II which I will be bringing forward in the near future.

d) The Open Space Review called for by the QQR should be completed as quickly as possible to provide an up to date assessment of park deficiences in the Central Core and Area.

e) A study of criteria for establishing significant pedestrian connections which accord with major public objectives should be conducted. This would form an appropriate basis for further consideration of bonusing for such connections.

f) The Section 1A.42 Review will include a further discussion of bonuses for heritage preservation beyond what is currently permitted under that Section.

g) I will be reporting further on a bonus under Section 36 for work place daycare in the Financial District and including consideration of the appropriateness of such a bonus in some of the High Density Mixed Commercial-Residential Areas.

Recommendations:

1. That the City Solicitor, in consultation with the Commissioner of Planning and Development, submit the necessary draft by-law to amend the Official Plan to introduce the guidelines for the use of Section 36 substantially as set out in Appendix 6 of this report.

2. That the UPH/FSI Review for Mixed Commercial Residential Areas called for in the 1986 Quinquennial Review, the study called for in Living Room II respecting assisted housing bonuses in Residence Areas, and any area specific or Part II studies dealing with residential densities consider the inclusion of new assisted housing provisions permitting density incentives in exchange for the provision of land for assisted housing, taking into account the considerations set out in Section 5.1 of this report and in the context provided by the guidelines in Appendix 6.

3. That until such time as a comprehensive policy respecting the Arts and Cultural Facilities has been developed for inclusion in the Official Plan, Council generally not further consider the use of density incentives beyond any which may already exist in the Plan, except as outlined in Section 5.3.2 of this report with respect to the Theatre Block and objectives set out in Section 6.10 of the Plan.

4. That the Commissioner of Planning and Development report to the Land Use Committee on a study of significant pedestrian connections as discussed in this report.

5. That the Commissioner of Planning and Development report on a bonus for work place daycare in the Financial District and the High Density Mixed Commercial-Residential Areas of the Central Core.

6. That the Commissioner of Planning and Development report, in consultation with the Toronto Historical Board, on bonuses for heritage preservation beyond what is currently permitted in Section 1A.42 of the Plan, as outlined in this report.

7. That I report, in consultation with the Commissioner of Parks and Recreation, on the use of Section 41 of the Planning Act as soon as possible.

8. That the Open Space Review to be conducted in consultation with the Commissioner of Parks and Recreation be expedited so as to provide an up to date assessment of Park deficiencies in the Central Core, and that in the interim the following criteria be adopted as the basis for further considering the use of Section 36 to acquire parkland:

In considering amendments to this Plan which provide for increased height and/or density in exchange for a public park, it is the policy Council that any such lands proposed to be conveyed to the City for parks purposes shall:

i) be located within an area identified in this Plan as park deficient;

ii) comprise land in excess of the amount which could be required pursuant to Section 41 of the Planning Act;

iii) not include land which could, in the context of redevelopment, be secured through street or lane closings or other land exchanges involving City owned lands;

iv) be an appropriate size in relation to the type of need;

v) provide for a satisfactory relationship with respect to surrounding uses and be of acceptable size and location in relation to the overall development; and

vi) provide acceptable sun and wind conditions, taking into account the overall environment in the area in which the proposed park is to be located.

For the purposes of clarity, where park acquisitions have occurred in an area identified in accordance with i) above, it is the policy of Council that increases in height and/or density generally not be authorized in exchange for the provision of additional parkland unless, in Council's opinion, the area remains park deficient or the acquisition of additional parkland is deemed by Council to be desirable.

Robert E. Millward
Commissioner

BL/in/clh

Land Use Committee

(c71luc88217:286)
June 6, 1988

APPENDIX 1

Guidelines for Inclusion in the
Official Plan Respecting
Height and/or Density Incentives
to Promote Private Sector Involvement
in the Provision of Public Benefits, including Assisted Housing
(as contained in Appendix 7 of the November 26, 1987 Report).

8.12 As permitted by Section 36 of The Planning Act, in amending this Plan to include general provisions and policies, and provisions or policies developed in the context of applications for specific developments, and in passing zoning by-laws to implement this Plan, Council may authorize increases in the height and/or density of development in order to encourage private sector involvement in the realization of the objectives of this Plan with respect to the following facilities, services and matters:

i. assisted housing;

ii. non-profit community, cultural and institutional facilities;

iii. heritage preservation;

iv. public open space beyond that which might otherwise be required pursuant to The Planning Act;

v. significant pedestrian connections in accordance with major public objectives; and

vi. other facilities, services, and matters which may not otherwise be required to be provided pursuant to The Planning Act, and which are considered to be advisable by Council following its consideration of the appropriate planning study.

8.13 In identifying specific facilities, services and matters in exchange for which increases in height and/or density may be authorized, it is Council's intention that such increases should generally be used to promote private sector involvement in the provision and use of land,

buildings or parts of buildings, structures and physical spaces for specified purposes.

8.14 In determining the size of any height and/or density increase which it may authorize in accordance with Section 8.12, Council will have particular regard for:

i. the need to ensure an appropriate building scale and satisfactory microclimatic conditions in the context of surrounding development and land uses;

ii. the need to ensure that transportation and other services can accommodate the increase in density;

iii. the estimated market value of the increase in density; and

iv. the estimated cost of providing the specific facilities, services or matters which may be accepted in exchange for any increases in height and/or density.

8.15 In order to ensure that the objectives of this Plan with respect to mixed use development, housing, office space and transportation are not compromised, it is Council's position that increases in commercial density in accordance with Section 8.12 should generally be limited to the Financial District, except where special area studies, including study of the impact of such incentives, indicates that the provision of such incentives elsewhere is consistent with these objectives.

8.16 With respect to any incentives which may be authorized in accordance with Section 8.12 in order to promote the provision of assisted housing, it is Council's objective that

a) such provision take the form of

i. the allocation of land for assisted housing on the development site;

ii. the provision of land acceptable to Council for assisted housing purposes at another location; and/or

iii. a cash payment-in-lieu of the provision of land for assisted housing purposes; and

b) the estimated value of any increases in height and/or density authorized in exchange for the provision of land for assisted housing in accordance with paragraphs (ii) and (iii) of Section 8.16 (a) above and/or any cash payment-in-lieu, should generally not exceed approximately two times the estimated cost of providing the assisted housing contribution.

8.17 With respect to any increases in height and/or density which Council may authorize in exchange for other public benefits, Council recognizes that the provision of certain public benefits may also enhance the value of the private development, and that in such cases a smaller incentive than that provided with respect to assisted housing would be appropriate.

8.18 It is the policy of Council to review any policies and provisions developed in accordance with Sections 8.12 - 8.17 above at least every five years from the date of the approval of those Sections.

APPENDIX 2

Section 1A.42(b) - Heritage Bonus Provisions

Notwithstanding any other provision of this Plan, Council shall, on the application therefore by the owner of a lot which contains a building or structure designated by Council as having historic or architectural value or interest under The Ontario Heritage Act, pass by-laws to permit the exclusion of the gross floor area of the designated building or structure, or portion thereof, which is retained in the new development, from the calculation of the maximum permissible density of the new development on the lot, provided that:

(i) where only a portion of the designated building or structure is retained, such portion contains features of historic or architectural value or interest; and

(ii) the relationship between the designated building or structure, or portion thereof, and the development will be in the opinion of Council, such that the quality and character of the designated building or structure, or portion thereof, will be respected; and

(iii) in the case of lots located in Residence Areas, the gross floor area excluded does not exceed 25 percent of the maximum residential gross floor area permitted on such lots by this Plan; and

(iv) in the case of lots in Mixed Commercial-Residential Areas, the gross floor area excluded does not exceed the amount specified below for the Area in which the lot is located:

- 0.5 times the area of the lot in Low and Medium Density Mixed Commercial-Residential Areas,
- 1.125 times the area of the lot in High Density Mixed Commercial-Residential Areas, or
- 2.0 times the area of the lot in the Financial District; and

(v) the retention, maintenance, and use of the designated building or structure, or portion thereof, are secured by the City by an appropriate legal agreement.

For the avoidance of doubt, a by-law passed under this Section may permit the gross floor area which is excluded from the calculation of the maximum permissible density of the new development on the lot to be used for any purpose for which Council may pass by-laws applicable to the Area in which the lot is located.

Land Use Committee

(c71luc88217:286)
June 6, 1988

APPENDIX 3

Definitions of
Community Services and Facilities and General Institutions

The term community services and facilities means those facilities and services provided on a non-profit basis, intended primarily to serve a local or district resident or working population such as, but not limited to, elementary and secondary schools, churches and other religious facilities, daycare centres, recreational, cultural and social welfare facilities, libraries, fire halls, police stations, and YMCA, YWCA or similar establishments and any office appurtenant and accessory to such uses; but does not include the following:

(i) the administrative offices of an organization providing such services where the services are primarily delivered at a location or locations beyond the area in which such offices are located; nor

(ii) housing accommodation owned and operated by or in conjunction with a community service and facility; nor

(iii) a general institution.

The term general institution or general institutional use means facilities and services provided for the use of the public or particuliar segments of the public on a non-profit basis, whether provided directly or indirectly by government, charitable, community, non-profit or other social agencies, and whose service area extends beyond a neighbourhood or district, to include the City of Toronto, the wider Metropolitan area or beyond, and includes uses such as, but not limited to, hospitals including the offices of professional persons located within such hospitals, post-secondary educational facilities, and major public art galleries, museums, and libraries and any office appurtenant and accessory to such uses; but does not include the following:

(i) the administrative offices of a general institution where the services are primarily delivered at a location or locations beyond the area in which such offices are located; nor

(ii) housing accommodation owned or operated by a general institution, such as, but not limited to, a university or hospital residence.

APPENDIX 4

Policies Respecting Community Services and Facilities

1A.30 It is the policy of Council to encourage the provision of community services and facilities in the Central Area to meet the needs of the present and future resident, working and visitor populations, on a local area basis.

1A.35 (a) Notwithstanding Section 1A.32, Council may pass by-laws in Mixed Comemrcial-Residential Areas to permit buildings containing community services and facilities, alone or in combination with other permissible uses, at an institutional density in excess of that set out in Section 1A.32, provided tnat such additional institutional density is used for the purpose of community services and facilities and does not exceed the amount stipulated below for the Area in which the lot is located:

(i) 0.2, in the case of lots located in Low Density Mixed Commercial-Residential Areas;

(ii) 0.4 times, in the case of lots located in Medium Density Mixed Commercial-Residential Areas;

(iii) 0.65 times, in the case of lots located in the High Density Mixed Commercial-Residential Area designated on Bloor Street from the west side of Avenue Road to the west side of Huntley Street; and

(iv) 0.8 times, in the case of the lots located in other High Density Mixed Commercial-Residential Areas or in the Financial District.

1A.37 (a) In Residence Areas in the Central Area, it is the policy of Council to pass by-laws to limit the gross floor area of community services and facilities to an amount not exceeding the residential gross floor area permitted in the particular Area by the Plan.

(b) Notwithstanding Section 1A.37(a), Council may, upon application therefor by the owner of a lot, pass by-

laws in a Residence Area to permit the erection and use of buildings containing community services and facilities, alone or in combination with residential uses, at a density greater than that permitted by Section 1A.37(a), provided that such additional gross floor area is used for the purpose of community services and facilities and does not exceed 10 percent of the residential gross floor area permitted by this Plan in the Area in which the lot is located.

APPENDIX 5

Letter from the
Commissioner of Parks and Recreation dated January 22, 1988

"I am concerned that the specific wording of the Official Plan Amendment proposed by this report on Assisted Housing may not work in the best interests of this Department. The proposal is to permit increases in height or density for various matters including:

'iv. public open spaces beyond that which might otherwise be required pursuant to the Planning Act.'

The Planning Act under Section 41 permits the City to require:

'that land in an amount not exceeding, in the case of land proposed for development or redevelopment for commercial or industrial purposes, 2 percent and in all other cases 5 percent of the land be conveyed to the municipality for park or other public recreation purposes.'

As an alternative the Act permits:

'in the case of land proposed for development or redevelopment for residential purposes the by-law may require that land be conveyed to the municipality for park or other public recreation purposes at a rate of one hectare for each 300 dwelling units or at such lesser rate as may be specified by the by-law.'

At the present, the City does not regularly use Section 41 to require parks dedication or cash-in-lieu for parks. Unless, and until, the City has a policy of using Section 41 for all developments in the City, any requirement for parks will apparently be in exchange for an increase in density or height regardless of whether a Section 41 by-law is passed for the specific site. This is because the requirement for parks will only be applied to those properties that have applied for a rezoning and an increase in height or density. It is therefore possible that the proposed wording would prevent the City from gaining parks spaces on rezoning applications.

As I have already made you aware, I would like to see Section 41 of the Planning Act implemented for all development and redevelopment in the City. However, unless Section 41 is implemented at the same time or prior to the adoption of the

proposed Section 8.12 of the Official Plan, the wording may cause problems with parks acquisition.

There is also a problem that the wording refers to 'public open space'. First, I do not think there should be a bonus for open space other than park space. Second, if it is accepted that 'public open space' is worthy of a bonus, the bonus should only be available where there is a clear increase in open space available to the public beyond what might have been provided on the site under the existing zoning. At present, the Zoning By-law requires specific amounts of 'common outdoor space' for most types of development. In at least one recent rezoning application, the provision of publicly accessible open space has been used as a reason in the Preliminary Report to consider an application further even though the total amount of open space provided on the site is far less than the common outdoor space that would have been required if the development had proceeded without a rezoning. I do not believe that providing less open space than the Zoning By-law would require can be considered a benefit for which extra density or height should be permitted, yet the proposed wording would permit this interpresentation.

I would like to discuss with your Department options for rewording this Section to avoid the above-noted problems. For further information on this matter, please call Mary Neumann at 2-7251.

I hope this matter can be quickly resolved."

APPENDIX 6

PROPOSED OFFICIAL PLAN AMENDMENT

Guidelines for Inclusion in the
Official Plan Respecting
Height and/or Density Increases
in Return for the Provision
of Public Benefits

8.12 (a) As permitted by Section 36 of the Planning Act, in amending this Plan to include general or Part II provisions and policies, and provisions or policies developed in the context of applications for specific developments, and in passing zoning by-laws to implement this Plan, Council may authorize increases in the height and/or density of development in return for the provision of one or more of the following facilities, services and matters, in order to achieve the objectives of this Plan:

i. social housing;

ii. non-profit community, cultural and institutional facilities;

iii. heritage preservation of designated properties;

iv. public parks;

v. significant pedestrian connections in accordance with major public objectives; and

vi. other facilities, services, and matters which Council, following its consideration of the appropriate planning study, deems to be advisable;

provided that the following additional matters are provided to the City, unless Council determines such to be unnecessary or inapplicable in the circumstances, and are secured by an appropriate agreement, registered on title:

A. one per cent (1%) for public art;

B. noise impact statement and construction in conformity therewith;

C. wind and sun studies and construction in conformity therewith;

D. waste recycling program;

E. environmental reports and construction in conformity therewith;

F. archeological strategy report and construction in conformity therewith;

G. development related infrastructure improvements including streetscape improvements; and

H. transportation studies.

(b) Where a facility, service or matter set out in 8.12(a) above is one which City Council may require pursuant to Section 40 or Section 41 of the Planning Act or can be otherwise required by Council, it is the policy of Council that increases in height and/or density contemplated under 8.12(a) above shall be authorized only for the provision of the facility service or matter beyond or in excess of that which could be so required.

(c) The appropriate planning study referred to in Section 8.12(a)(vi) which recommends any other facility, service or matter for which a bonus may be advisable, shall, among other things:

i. establish that the facility, service or matter and the associated bonus is consistent with the general principles of this Section;

ii. identify the specific Official Plan policy objective or objectives that would be promoted by any such incentive;

iii. give due consideration to the extent to which the facility, service or matter fulfills a specific or more general need or objective; and

iv. in the case where the objective is of a general nature, assess the potential further use of the incentive and its cumulative effect, and establish an appropriate context for considering similar increases in height and/or density in exchange for such facility service or matter.

(d) In identifying specific facilities, services and matters in exchange for which increases in height and/or density may be authorized, it is Council's intention that such increases should be used to promote private sector involvement in the provision and use of land, buildings or parts of buildings, structures and physical spaces for specified purposes. Such increases should not be used to promote the provision of on-going operating funding that is the responsibility of the City or other levels of government.

(e) In order to ensure that the objectives of this Plan with respect to mixed use development, housing, office space and transportation are not compromised, it is Council's position that increases in commercial density authorized in accordance with this Section should be limited to the Financial District, except where Part II or special area studies, including study of the impact of such incentives, indicates that the provision of such incentives elsewhere is consistent with local objectives and broader City-wide objectives.

(f) In determining the size of any height and/or density increase which it may authorize in accordance with this Section, Council will have particular regard for:

i. the need to ensure appropriate building scale and satisfactory microclimatic conditions in the context of surrounding development and land uses;

ii. the need to ensure that transportation and other services can accommodate the increase in density;

iii. the estimated market value of the increase in density; and

iv. the estimated cost of providing the specific facilities, services or matters which may be accepted in exchange for any increases in height and/or density.

(g) In considering amendments to this Plan that have the effect of authorizing increases in height and/or density in exchange for facilities, services or matters, Council shall:

i. have regard for the other bonus provisions of this Plan which may also be applicable;

ii. impose an appropriate maximum bonus allowance which can be achieved through the stacking of increases in density authorized by this Section or any other Section of this Plan;

iii. ensure that the relationship between the estimated market value of the increase in density and the estimated cost of the facility, service or matter is reflective of public priorities; and

iv. have regard for the fact that certain facilities, services and matters set out in 8.12(a), such as heritage preservation, are location specific and can only be achieved on site, and accordingly ensure that in general and where appropriate, such facilities, services and matters are secured as a first priority.

(h) Prior to adopting any area or Part II Plan which contemplates the use of height and/or density incentives under Section 36 in exchange for the provision of land or a cash contribution toward the provision of social housing, Council shall ensure that appropriate consideration has been given to the use of Council's Authority under the City of Toronto Act respecting alternative densities for social housing producers.

(i) With respect to any incentives which may be authorized in accordance with this Section in order to promote the provision of social housing, it is Council's objective that:

i) such provision take the form of:

a) the conveyance of land for social housing on the development site;

b) the conveyance of land acceptable to Council for social housing purposes at another location; and/or

c) a cash contribution for social housing purposes; and

ii) the estimated value of any increases in height and/or density authorized in exchange for the provision of land for social housing in accordance with paragraphs (b) and (c) of Section 8.12(i)(i) above and/or any cash contribution, should generally not exceed two times the estimated cost of providing the social housing contribution.

(j) With respect to any increases in height and/or density which Council may authorize in exchange for public benefits referred to in 8.12(a), other than social housing, Council recognizes that the provision of certain public benefits may also enhance the value of the private development, and that in such cases a smaller incentive than that provided with respect to social housing would be appropriate.

(k) With respect to any increases in height and/or density which Council may authorize in exchange for a public park, and in estimating the cost of providing the park and determining the size of any bonus, Council shall have regard for Section 5.31(b) of this Plan, which Section ensures that where land is conveyed by an owner to the City for parks purposes, any development rights associated with those lands so conveyed will be vested in the lands retained by the owner.